[redacted]

Supreme Court of the United States

[redacted]

No. [redacted]

[redacted]

[redacted]

[redacted]

(32,952)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927

No. 500

THOMAS J. CASEY, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

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NAMES AND ADDRESSES OF COUNSEL.

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719–2d Avenue, Seattle, Washington.

JOHN T. CASEY, Esquire, Attorney for Plaintiff in Error,
531 Lyon Building, Seattle, Washington.

THOMAS P. REVELLE, Esquire, Attorney for Defendant in Error,
310 Federal Building, Seattle Washington.

PAUL D. COLES, Esquire, Attorney for Defendant in Error,
303 Federal Building, Seattle, Washington.

[1*]

United States District Court, Western District of Washington, Northern Division,

November, 1925, Term.

No. 10,392.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

THOMAS J. CASEY,
Defendant.

---

*Page-number appearing at the foot of page of original certified Transcript of Record.

INDICTMENT.

Vio. Act of December 17, 1914, as Amended.

United States of America,
Western District of Washington,
Northern Division,—ss.

The grand jurors of the United States of America, being duly selected, impaneled, sworn and charged to inquire within and for the Northern Division of the Western District of Washington, upon their oath present: [2]

COUNT I.

That THOMAS J. CASEY, on the 31st day of December, in the year of our Lord one thousand nine hundred twenty-five, at the City of Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this court, then and there being, did then and there knowingly, willfully, unlawfully, and feloniously, and not in the original stamped package, nor from the original stamped package, purchase from a person whose name is to the grand jurors unknown a quantity, to wit, three and four-tenths (3.4) grains of a certain compound, manufacture, salt, derivative, and preparation of opium to wit: morphine, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [3]

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

COUNT II.

That THOMAS J. CASEY, on the 31st day of December, in the year of our Lord one thousand nine hundred twenty-five, at the City of Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this court, then and there being, did then and there knowingly, willfully, unlawfully, and feloniously manufacture, produce, compound, sell, deal in, dispense, distribute, administer, and give away a certain compound, manufacture, salt derivative, and preparation of opium, to wit: morphine, without having registered and paid the special tax as required and imposed by law; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

THOS. P. REVELLE,
United States Attorney.
ARTHUR E. SIMON,
Assistant United States Attorney.

[Endorsed]: Presented to the Court by the Foreman of the Grand Jury in Open Court, in the Presence of the Grand Jury, and Filed in the U. S. District Court, Feb. 24, 1926. Ed. M. Lakin, Clerk. By S. E. Leitch, Deputy. [4]

[Title of Court and Cause.]

VERDICT.

We, the jury in the above-entitled cause, find the defendant Thomas J. Casey is guilty as charged in Count I of the indictment herein; and further find the defendant Thomas J. Casey is guilty as charged in Count II of the indictment herein.

DAVID C. McKEE,
Foreman.

[Endorsed]: Filed Jun. 10, 1926. [5]

[Title of Court and Cause.]

MOTION IN ARREST OF JUDGMENT.

May Term, 1926.

And now after verdict against the defendant and before sentence, comes said defendant in his own proper person and by his attorneys of record, and moves the Court herein, to arrest the judgment and not pronounce judgment or sentence, for the following reasons, to wit:

a. Because Count I in the indictment does not state sufficient facts to constitute a crime under the laws of the United States.

b. Because Count II in the indictment does not state or charge facts sufficient to constitute a crime under the laws of the United States, and a verdict thereon would not bar further prosecution.

c. That the indictment as a whole was procured by false testimony and does not charge a crime under the laws of the United States, and a verdict thereon would not bar further prosecution.

d. That physical facts show conclusively that the defendant could not and did not commit the crime alleged, or attempted to be alleged, in the indictment.

e. That the Government failed to prove the defendant's guilt beyond a reasonable doubt or at all.

f. That improper evidence was admitted at the trial and which was prejudicial to defendant.

This motion is made and based on the record herein, and because of the errors in the record no lawful judgment or sentence can be rendered or passed by the Court upon such record, and this motion will be called up for hearing at 10 o'clock A. M., or as soon thereafter as counsel can be heard before Hon. Edward E. Cushman, Judge, and prior to judgment or sentence on the 3d day of July, 1926.

JOHN T. CASEY,
JAY C. ALLEN,
JOHN T. CASEY,
Defendant's Attorneys.

Due service of the foregoing motion admitted June 30, 1926.

THOS. P. REVELLE,
Plaintiff's Attorneys.
B.E.M.

[Endorsed]: Filed Jun. 30, 1926. [6]

[Title of Court and Cause.]

HEARING ON MOTION IN ARREST OF JUDGMENT.

Motion for New Trial—For Sentence on Verdict of Guilty, Both Counts.

Now, on this 3d day of July, 1926, this cause comes on for hearing on motions in arrest of judgment and new trial. Oral argument is had on motions in arrest of judgment and new trial. Motion in arrest of judgment is denied with exception allowed. The Government is allowed one week to file controverting affidavits. Defendant is allowed one week to file reply affidavits. Defendant to file written brief July 24, Government answering brief Aug. 3d. Defendant reply brief August 10. Sentence is passed at this time.

Journal No. 14, at page 562. [7]

[Title of Court and Cause.]

MOTION FOR NEW TRIAL.

Comes now the defendant above named, Thomas J. Casey, and by his attorneys of record, moves the Court to vacate and set aside the verdict returned herein on the 10 day of June, 1926, and to grant defendant a new trial, and for reasons therefor shows to the Court the following:

a. The verdict is contrary to the law of the case.

b. The verdict is not supported by any credible evidence in the case, and is contrary to such evidence, and was based on false testimony.

c. The Court admitted incompetent evidence at the trial offered by the United States.

d. The Court excluded competent evidence at the trial offered by the defendant.

e. The Court improperly instructed the jury to defendant's prejudice.

f. The Court improperly refused, to defendant's prejudice, to give correct instructions requested by defendant.

g. Misconduct of the jury.

h. The Court erred in refusing to direct a verdict of not guilty on both counts at the close of the Government's case.

i. The Court erred in refusing to direct a verdict of not guilty on both counts as requested by defendant at the close of all the evidence.

j. Newly discovered evidence material for the defendant and which could not have been discovered and produced at the trial by reasonable diligence.

k. Misconduct of the prosecution and accident and surprise to defendant which ordinary prudence could not have guarded against.

This motion is made and based on the records and files herein, on evidence taken at the trial and on affidavits to be served and filed in support of

this motion, and will be called up for hearing on July 3, 1926, at 10 A. M.

JOHN T. CASEY.
JAY C. ALLEN,
JOHN T. CASEY,
Defendant's Attorneys.

Due service of the foregoing motion admitted June 30, 1926.

THOS. P. REVELLE,
Plaintiff's Attorney.
B.E.M.

[Endorsed]: Filed Jun. 30, 1926. [8]

[Title of Court and Cause.]

PETITION FOR NEW TRIAL (SUPPLEMENTAL).

The defendant Thomas J. Casey, individually, and through his attorneys of record, petitions the Court to vacate and set aside the verdict returned herein on the 10 day of June, A. D. 1926, and to grant said defendant a new trial on the following grounds and for the following reasons, to wit:

1. Irregularity in the proceedings of the Court, jury and the plaintiff whereby defendant was prevented from having a fair trial.
2. Misconduct of the jury and of the plaintiff.
3. Accident and surprise which ordinary prudence could not have guarded against.
4. Newly discovered evidence which is material

for defendant and which reasonable diligence could not have discovered and produced at the trial.

5. Insufficiency of the evidence to justify the verdict, in this: That there was no evidence whatever, credible or otherwise, that defendant purchased 3.4 grains of morphine as alleged in the first count of the indictment, or any other amount, at Seattle, or in the northern Division of the Western District of Washington and within the jurisdiction of this court. Nor if any was purchased that it was not in or from the original stamped packages.

That there was no evidence whatever, credible or otherwise, that the defendant did manufacture, produce, compound, sell, deal in, dispense, distribute, administer, and give away any blank amount of morphine within the jurisdiction of this court, and without having registered or paid the special tax required and imposed by law on such blank amount of morphine, as alleged in Count II of the indictment, or otherwise or at all.

6. Error in law occurring at the trial and excepted to at the time by defendant, in this: (a) That witnesses were allowed to testify for the Government in a general way from imagination rather than from fact, about the actions and doings of people who never were defendant's clients, and over whom he had no control, and with whom he never had any dealings. That such testimony was most insidious, deceptive, and prejudicial to defendant.

(b) Error in failing and refusing to instruct the *the* jury to return a verdict of not guilty in favor of defendant on Count I.

(c) Error in failing and refusing to instruct the jury to return a verdict of not guilty in favor of defendant on Count II.

(d) Error in failing and refusing to instruct the jury that there was no credible evidence in the case against defendant upon which a verdict of guilty could be based.

This motion is made and based on the records and files herein, on the evidence taken at the trial, and on affidavits herewith served and filed, and this motion will be presented prior to sentence.

JAY C. ALLEN.
JOHN T. CASEY.
JAY C. ALLEN,
JOHN T. CASEY,
Defendant's Attorneys.

Due service received July 3, 1926.

PAUL D. COLES,
Asst. U. S. Attorney.

[Endorsed]: Filed Feb. 26, 1927. [9]

[Title of Court and Cause.]

SENTENCE.

Comes now on this 3d day of July, 1926, the said defendant, Thomas J. Casey, into open court for sentence and being informed by the Court of the charges herein against him and of his conviction of

record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him, and he nothing says save as he before hath said. "Wherefore, by reason of the law and the premises, IT IS CONSIDERED, ORDERED AND ADJUDGED by the Court that the defendant is guilty of violating the Act of December 17, 1914, as Amended and that he be punished by being imprisoned in the United States Penitentiary at McNeil Island, Pierce County Washington, or in such other prison as may be hereafter provided for the imprisonment of offenders against the laws of the United States for the period of 14 months at hard labor on each of Counts I and II, terms to run concurrently and not consecutively, and to pay taxable costs. And the said defendant is hereby remanded into the custody of the United States Marshal to carry this sentence into execution."

Judgment and Decree, Vol. 5, at page 260. [10]

[Title of Court and Cause.]

HEARING ON MOTION FOR NEW TRIAL.

Motion for New Trial Denied.

(Order Extending Time for Lodging Bill of Exceptions.)

Now on this 20th day of September, 1926, all parties being present in court, the Court announces from the bench that affidavits as to newly discovered evidence not of character to justify new

trial. Affidavits impeaching witness Nelson not in point on motion for new trial. Other affidavits as filed fully considered. Motion for new trial is denied with exception allowed.

Fourteen days are allowed to file bill of exceptions and present bail is enlarged for 14 days from this date.

Journal No. 14, at page 616. [11]

[Title of Court and Cause.]

PETITION FOR WRIT OF ERROR.

To the Hon. E. E. CUSHMAN, Judge of the Above-entitled Court:

The petition of Thomas J. Casey, by Jay C. Allen and John T. Casey, his attorneys, respectfully shows that on the 3d day of July, 1926, the United States District Court for the Western District of Washington, Northern Division, gave judgment against your petitioner in the above-entitled cause, wherein, as appears from the face of the record of the proceedings therein, certain errors were committed which are more fully set forth in the assignments of error presented herewith,—

NOW, THEREFORE, to the end that said matters may be reviewed and said errors corrected by the Circuit Court of Appeals for the Ninth Circuit, your petitioner prays for the allowance of a writ of error and such other orders and processes as may cause all and singular the record and proceedings in said cause to be sent to the Honorable Jus-

tices of the Circuit Court of Appeals for the Ninth Circuit for review and correction; and that an order be made staying and suspending all further proceedings herein pending the determination of said writ of error by said Circuit Court of Appeals.

JAY C. ALLEN,
JOHN T. CASEY,
Attorneys for Petitioner.

[Endorsed]: Filed Sep. 28, 1926. [12]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Comes now the defendant and makes the following assignment of errors:

The District Court erred as follows:

1. In permitting the witness Allen J. Stark to testify: "That the majority of defendant's clients were narcotics," and that "After defendant's visits to the county jail his clients were under the influence of narcotics." With other similar testimony, and denying defendant's motion to strike such testimony out.

2. In permitting said witness Stark with other witnesses to testify concerning the installation of a dictaphone in the county jail.

3. In permitting said witness Stark to testify that, "Addicts ordinarily take the shot with a needle," and other similar testimony.

4. In permitting the witness George Cicero and other witnesses to testify that, "Defendant visited

said Cicero on December 19, 1925," and on prior occasions, and then conversed about, "An order for $25.00 which Cicero gave to defendant and asked defendant to send him some junk, meaning morphine," and in testifying that, "Some morphine came to the county jail saturated in a pair of white socks the following Sunday," for the reason that such testimony was prejudicial and was irrelevant to the charges in the indictment. [13]

5. In permitting Cicero and other witnesses to testify concerning any conversation that defendant had with such witness, regarding narcotic drugs and, "I told him he could send it in saturated in a bath towel or laundry of some sort."

6. In permitting Geral V. Close to testify that defendant said to Cicero, "How do you feel?" That Cicero replied, "Pretty bad, can you fix me up?" That Casey said, "I haven't anything with me. Have you any money?" "Yes, I have $20.00. Will you send me up some morphine? You can send it up in the laundry." To which defendant said, "Yes, I will, give me the order for the $20.00, on the ground that such testimony was prejudicial to defendant, and was irrelevant and immaterial to the specific charges made in the indictment, and was given over defendants objection.

7. In permitting any evidence of conversations or acts in the county jail on December 31, 1925, over defendant's objection as not proving or tending to prove any charge in the indictment.

8. In admitting over defendant's objection Exhibit 4 as incompetent, irrelevant and immaterial.

In admitting Exhibit 5 on the same grounds. In admitting Exhibit 6 on the same grounds. In admitting Exhibit 7 objected to on the same grounds. In admitting Exhibit 8 objected to on the same grounds. In admitting Exhibit 9 objected to on the same grounds.

9. In allowing the witness Frances Nelson to testify that Roy Nelson her brother-in-law said to her, concerning defendant, "This is the man that supplies all of us boys with narcotics whenever we want it," for the reason that such testimony was prejudicial and did not prove or tend to prove either charge of the indictment. [14]

10. In allowing the witness Robert J. Hawkins to testify, "That on December 18 or 19, 1925, I delivered some laundry to a prisoner by the name of Wilson. Wilson took his laundry in his mouth and fell over on his bunk, and began to suck on one of those socks," over defendant's objection as immaterial, as such testimony did not prove or tend to prove the specific charges in the indictment and was prejudicial to defendant.

11. In instructing the jury, "That if it has been shown by evidence convincing you beyond a reasonable doubt that this towel with the morphine in it was in the possession of the defendant, that evidence is prima facie evidence of his guilt," on the grounds that said instruction assumes that morphine was in the towel.

12. In instructing the jury, "If defendant had registered, or paid the tax he must have shown it, and you will assure that he had not registered

or paid the tax," on the ground that such instruction places the burden on defendant of showing his innocence.

13. In refusing to instruct the jury to find the defendant not guilty on count I of the indictment.

14. In refusing to instruct the jury to find the defendant not guilty on count 2 of the indictment.

15. In denying defendant's motion in arrest of judgment.

16. In pronouncing judgment and sentence upon the defendant.

17. In denying defendant's motion for a new trial.

WHEREFORE, plaintiff in error, prays that the judgment of said District Court be reversed and this cause remanded thereto with instructions to dismiss the same and discharge plaintiff in error and exonerate his sureties and for such other and further relief as seems proper to the Court.

JAY C. ALLEN,
JOHN T. CASEY,
Attorneys for Plaintiff in Error.

Due service of the foregoing assignment of errors admitted this 29 day of September, 1926.

PAUL D. COLES,
Attorneys for Defendant in Error.

[Endorsed]: Filed Sep. 28, 1926. [15]

[Title of Court and Cause.]

ORDER ALLOWING WRIT OF ERROR.

Upon motion of Jay C. Allen and John T. Casey, attorneys for the above-named defendant, and upon filing a petition for a writ of error and an assignment of errors as required by law,—

IT IS HEREBY ORDERED, that a writ of error be and hereby is allowed to have reviewed in the Honorable United States Circuit Court of Appeals of the United States for the Ninth Circuit the judgment entered herein on July 3, 1926, and it is further ordered that the amount of defendant's bond on said writ of error is hereby fixed at the sum of $5,000.00 to be given by said defendant, and on giving of such bond by two sufficient sureties, or the same sureties as were heretofore approved by the Court Commissioner, that the judgment heretofore rendered together with all proceedings thereon on disbarment and otherwise be superseded and stayed pending the hearing of said cause in the Honorable United States Circuit Court of Appeals for the Ninth Circuit.

IN WITNESS WHEREOF, the above order is granted and allowed the 29th day of September, 1926.

EDWARD E. CUSHMAN,
Judge.

[Endorsed]: Filed Sep. 29, 1926. [16]

[Title of Court and Cause.]

BAIL BOND ON WRIT OF ERROR.

KNOW ALL MEN BY THESE PRESENTS, That I, Thomas J. Casey, of the County of King, State of Washington, as principal, and Catherine Tracy and Thomas W. Tracy, Ella B. Traynor, Thomas J. Traynor, B. A. Brady, Grace Brady, as sureties, are held and firmly bound under the United States of America in the full and just sum of Five Thousand ($5,000.00) Dollars, to be paid to the United States of America, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and signed this 29 day of September, 1926.

WHEREAS, lately on the 3d day of July, 1926, in *the entitled* court in the above-entitled cause pending in said court, a judgment and sentence was rendered against the defendant, Thomas J. Casey, and this said defendant obtained a writ of error from the United States Circuit Court of Appeals for the Ninth Circuit to the said District Court to reverse the judgment and sentence in the aforesaid suit and a citation directed to the said United States of America, citing and admonishing the United States of America to be and appear in the said court thirty days from and after the date thereof, which citation has heretofore been served. [17]

Now the condition of said obligation is such that if the said Thomas J. Casey shall appear in person in the United States Circuit Court of Appeals for the Ninth Circuit when said cause is reached for argument or when required by law or rule of said court and from day to day thereafter in said court until said cause shall be finally disposed of and shall abide and pay the judgment and all orders made by said Court of Appeals in said cause and shall surrender himself in execution of the judgment and sentence appealed from, as said court may direct if the judgment and sentence against him shall be affirmed, and if he shall appear for trial in the District Court of the United States for the Western District of Washington, Northern Division, on such day or days as may be appointed for a retrial by said District Court and abide by and obey all orders of said court provided the judgment and sentence against him shall be reversed by the United States Circuit Court, then the above obligation to be void; otherwise to remain in full force, virtue and effect.

B. A. BRADY.
GRACE BRADY.
THOMAS W. TRACY.
CATHERINE TRACY.
THOMAS J. CASEY.
T. J. TRAYNOR.
ELLA B. TRAYNOR.

Approved as to surety, Sept. 30, 1926.
[Seal] A. C. BOWMAN,
U. S. Commissioner. [18]

JUSTIFICATION OF FIRST SURETY.

United States of America,
Western District of Washington,
Northern Division,—ss.

Catherine Tracy, a surety on the annexed recognizance, being duly sworn, deposes and says that —he resides at 734 N. 34th Ave., in the City of Seattle, Wn., in said District; that —he is a freeholder in the City of Seattle, Wn., and that —he is worth the sum of Five Thousand ($5,000.00) Dollars, over and above all *his* just debts and liabilities, in property subject to execution and sale, and that *his* property consists of Lots 17 and 18, block 2 Quilter's Addition to Seattle, Wn. Assessed value, $2,180.00. Separate property.

(Affiant's Signature) CATHERINE TRACY.

Sworn to and subscribed before me, this 30th day of September, A. D. 1926.

[Seal] A. C. BOWMAN,
United States Commissioner as Aforesaid. [19]

JUSTIFICATION OF FIRST SURETY.

United States of America,
Western District of Washington,
Northern Division,—ss.

Thos. J. Traynor and Ella B. Traynor, his wife, a surety on the annexed recognizance, being duly sworn, deposes and says that *he* resides at 1811 E. Spring St., in the City of Seattle, Wn., in said District, that *he* is a freeholder in the County of Snohomish, Wn., that *he* is worth the sum of Three

Thousand ($3,000.00) Dollars, over and above all *his* just debts and liabilities, in property subject to execution and sale, and that *his* property consists of N. E. ¼ N. E. ¼ Sec. 22, Tp. 27 N., R. 10 E., W. W., Snohomish County, Washington. (Containing million and a half of merchantable timber.)

(Affiant's Signature) T. J. TRAYNOR.
ELLA B. TRAYNOR.

Sworn to and subscribed before me, this 30th day of Sept., A. D. 1926.

[Seal] A. C. BOWMAN,
United States Commissioner as Aforesaid.

JUSTIFICATION OF SECOND SURETY.

United States of America,
Northern Division,—ss.
Western District of Washington,

Bernard A. Brady and Grace Brady, his wife, surety on the annexed recognizance, being duly sworn, deposes and says that *he* resides at 925 15th Ave., in the City of Seattle, Wn., in said District; that *he* is a freeholder in the City of Seattle, Wn.; that *he* is worth the sum of Five Thousand ($5,000.00) Dollars, over and above all *his* just debts and liabilities, in property subject to execution and sale, and that his property consists of S. 41 feet of the east 85 feet of lot 8, block 18 Edes and Knight's Supp. to Seattle, Wn. And Tract 167, Division 3 of Garden of Eden Addition, King Co., Wn. Assessed value, $2,180.00.

(Affiant's Signature) BERNARD A. BRADY.
GRACE BRADY.

Sworn to and subscribed before me, this 30th day of Sept., A. D. 1926.

[Seal] A. C. BOWMAN,
United States Commissioner as Aforesaid.

[Endorsed]: Filed Oct. 1, 1926. [20]

[Title of Court and Cause.]

ORDER EXTENDING TIME TO AND INCLUDING JULY 26, 1926, TO PREPARE AND FILE BILL OF EXCEPTIONS.

Upon application of the defendant, and it appearing to the Court that good cause exists therefor, it is,

ORDERED that the time in which a bill of exceptions may be prepared and filed heerin is hereby extended to the 26th day of July, 1926.

Done and ordered in open court this 18th day of June, 1926.

EDWARD E. CUSHMAN,
Judge.

[Endorsed]: Filed Jun. 18, 1926. [21]

[Title of Court and Cause.]

ORDER EXTENDING TIME TO AND INCLUDING AUGUST 26, 1926, TO FILE BILL OF EXCEPTIONS.

IT IS HEREBY ORDERED that the time for lodging in this court and presenting the bill of

exceptions in the above case be extended and continued until the 26th day of August, 1926.

Done in Esterbrook, Wyoming, this the 26th day of July, 1926.

EDWARD E. CUSHMAN,
Judge.

[Endorsed]: Filed Jul. 29, 1926. [22]

[Title of Court and Cause.]

ORDER EXTENDING TIME TO AND INCLUDING SEPTEMBER 27, 1926, TO FILE BILL OF EXCEPTIONS.

For cause shown, the time in which the defendant shall prepare and lodge in this court a bill of exceptions is hereby extended to Sept. 27th, 1926.

Done and ordered at Esterbrook, Wyo., this 24th day of August, 1926.

EDWARD E. CUSHMAN,
United States District Judge.

[Endorsed]: Filed Aug. 30, 1926. [23]

[Title of Court and Cause.]

BILL OF EXCEPTIONS.

BE IT REMEMBERED, that heretofore, to wit, on June 3, 1926, this cause came on for trial before Hon. Edward E. Cushman, District Judge; plain-

(Testimony of Allen J. Stark.)

tiff appearing by Thos. P. Revelle, U. S. Attorney, and defendant being present in person and by Jay C. Allen and John T. Casey, his attorneys.

WHEREUPON the following proceedings were had and testimony taken:

TESTIMONY OF ALLEN J. STARK, FOR PLAINTIFF.

ALLEN J. STARK, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. COLES.)

I was a deputy sheriff, jailer and superintendent of King County Jail in December, 1925. I know the defendant and have seen him visit prisoners in the King County Jail, and that most of his clients visited were narcotics,—the majority of them. That after the defendant visited some of these narcotic prisoners in the King County Jail, I had noticed that the same prisoners were under the influence of narcotics.

Mr. ALLEN.—The same is objected to, and I move to strike the answer as leading.

The COURT.—Objection is overruled and motion denied.

The COURT.—The last objection is that there is no competency [24—1] shown on the part of the witness to pass judgment on whether a person shows indication of being under the influence of narcotics. On that ground I would sustain the objection unless you qualify the witness.

(Testimony of Allen J. Stark.)

Examination.

I have been a jailer for about ten years. During my ten years' experience as jailer I have had much to do with narcotic prisoners, both under the influence of narcotics and those who were not, and from my experience, I have noticed that when addicts are placed in the institution and are cut off from the drug, they become sick, in fact, real sick, and are not able to do anything, and they lay around and sleep. After they get a little shot they brighten up and are different persons altogether, and that after Mr. Casey had visited some of these narcotic defendants in the King County Jail, I noticed that these same prisoners were under the influence of narcotics.

On December 29, I gave Mr. Patterson and Close permission to install a dictaphone in the attorney's cage. This is a little cage containing about six seats. We put the prisoners in there and allow the attorneys to come in there and talk and converse with them. I saw the dictaphone after it was installed, the receivers of which were in the light room adjoining the attorney's cage. Mr. Patterson and Mr. Close were at the jail on December 30, and deposited $20.00 to the credit of the prisoner Cicero. They were also there on December 31 about ten o'clock. They went back to the light room when Mr. Casey arrived (Tr., line 1, p. 7). Mr. Casey came in and asked to see George Cicero. He was allowed to see him, and after he had conversed with him for some time, came out with an order for $20 Cicero had given him, and we gave

(Testimony of Allen J. Stark.)

him the money. He then asked to see Roy Nelson, who, at the time was visiting with his sister-in-law, Mrs. Nelson. The defendant then asked to see Roy in the attorney's cage separate from the sister-in-law and we put him in there and they conversed for some time. After they had been there for a while, I went out to the end of the corridor and in a few minutes Roy and Mr. Casey came into the office and made out an order for $75.00 of Nelson's money. I knew Nelson did not have $75.00 and told Casey so. [25—2] Nelson was so sick that he could hardly stand up. I told Casey that I did not feel like paying him that much money, and he asked me how much I would want to pay out, and I said $50.00 ought to be enough, and he made the order for $50.00 and I paid it (Tr., p. 7).

IDENTIFICATION.

Government's Exhibit 1 is an order for $20 from George Cicero, upon which order I gave the money to Mr. Casey in Mr. Cicero's presence.

Government's Exhibit No. 2 is an order for $50.00 from Mr. Roy Nelson to Mr. Casey, and the money on these orders was given to Mr. Casey.

Mr. ALLEN.—When? I would like to know something about it. I object to the question as being too remote.

The COURT.—You will have to show who it was, or something to make it material.

Q. The Sunday previous to the arrest of Mr. Casey?

(Testimony of Allen J. Stark.)

A. I understand not the Sunday previous. I believe it was the 19th of December, 1925.

Q. Do you recall what prisoner that was directed to?

A. As a matter of fact I was not there when that came. I had instructed some—

Mr. ALLEN.—Never mind what you instructed somebody.

The COURT.—Objection sustained.

A. Coming directly from Mr. Casey. I really do not know of anything personally.

Q. Not that you know of personally?

A. No, sir.

Cross-examination.

(By Mr. ALLEN.)

WITNESS.—I have been superintendent there about ten years and have had a good many narcotic prisoners there. They are not furnished narcotics by the officers. The doctors may possibly do so, but we do not know anything about it. I do not know whether the addicts in jail are periodically furnished small doses of narcotics. I do not know what they are furnished. They are given something to make them sleep, at night, by the doctors but not by the jailer or officers. The doctors who administer this are Dr. Stanley, the State Doctor, and Dr. Don Palmer, [26—3] for the United States. They are largely given these treatments in the evening, but I really don't know whether

(Testimony of Allen J. Stark.)

it was narcotics or what it was. They have been given medicine at different times during the day.

I have phoned to Mr. Casey at the request of prisoners who were accused of crime other than narcotics, and he has been coming to the jail quite often for a good many years, and on this particular day I believe I phoned him and told him that a prisoner named Cicero wanted to see him. I knew that the dictaphone had been put in there, and I knew that he was coming up, and I knew that the officers were waiting there for him. They had told me what they had given the $20 to the prisoner Cicero for. They didn't tell me they were there to trap him. They were going to find out what he was doing and what the conversation was. I knew he was coming up and the officers were laying there for him. (12). Narcotic prisoners are not pacified or quieted down by promises of relief any more than any other patients.

The drugs are taken in different ways; they are ordinarily taken with a needle, but I never saw one of them taken. I have seen them lit up after they had been given narcotics, or had any in their possession, at times. I have found syringe guns on the prisoners and taken them away from them.

I have never searched any particular prisoner after Mr. Casey had visited them, but after Mr. Casey left I suspicioned he had given them narcotics. There would be other people visiting the jail about the same time, and also there would be numerous packages come up all day long. Mr. Casey was not the only lawyer who visited nar-

(Testimony of Allen J. Stark.)

cotic addicts. He has a very small percentage of the addict cases. I have no idea how many addict cases Mr. Casey has had. I could not tell how many he has had in the [27—4] last three years. There have been many hundreds of narcotic prisoners in the jail during that period. I know he has had more than five or six or ten, but I could not say how many. I really do not know, but I know he has had considerable.

Redirect Examination.

(By Mr. COLES.)

Before a person is put into a cell, he is generally given a complete search, and if they have narcotics or any instruments to administer narcotics, they are taken away. When the doctor treats patients or prisoners, I have no idea what he gives them. I do not know whether it is narcotics or something else. (18)

TESTIMONY OF GEORGE CICERO, FOR PLAINTIFF.

GEORGE CICERO, being duly sworn, testified:

Direct Examination.

(By Mr. COLES.)

I was in King County Jail around December 16, 1925. I have seen defendant Thomas J. Casey up there. I saw him about the 18th of 19th of December which was the Saturday and Sunday previous to his arrest. I had a conversation with him at that time. I told Mr. Casey that there was

(Testimony of George Cicero.)

a Government case coming up against me, but I did not want him as my attorney. I was going to plead guilty; and he said, "What do you want me for?" and I said, "You ought to know." He explained he did not want to change places with me. When he left I gave him an order for $25, that I had borrowed from another man in jail. Objected to as immaterial. Sustained, but he can tell what he told defendant. (21) I asked him to send me some junk, meaning morphine, and told him if he could not do it to get someone else, naming a party. He said he would if I would give him the money. The following Sunday the morphine came to the jail saturated in a pair of white socks. [28—5] I do not know who sent the laundry up. The laundry was delivered to another prisoner. I was in jail on the 29th of December, and sent a message for Mr. Casey to come and see me. I knew at that time there was $20 deposited to my credit in the jail. Mr. Casey came between ten and eleven o'clock on December 31. When he arrived I told him I was sick. This conversation took place in the attorney's cage. He was on the outside and I was in the cage. I told him that I was sick; that I did not feel well, and asked him if he had anything for me. He said he didn't have anything with him, and asked me if I had any money. I told him I had $20 in the office, and he said, "Are you sure," and I told him I was, and he left.

I asked him if he would send me some morphine, and he said he would if I would give him the $20.

(Testimony of George Cicero.)

I told him that he could send it in in a bath towel, or laundry of some sort; to buy some or go to my house and get some, and he said he would send it in.

I told him there was another prisoner in the tank by the name of Roy Nelson who had some money, and was sick and was in pretty bad shape, and wanted some narcotic drugs—morphine, and told Casey he had $140, and asked him if he would do something for Nelson, and he said he would see him. I saw him go into the office with Mr. Casey.

When I had the conversation with Mr. Casey, I told him to send the morphine in saturated in laundry, and he said he would. We then went into the jail office, and I signed an order for $20 and Mr. Stark gave him the money. I was then put back in the tank.

Q. "Did Mr. Casey come back to see you that day?" A. "Yes, sir." [29—6]

Mr. ALLEN.—That is leading.

The COURT.—Objection overruled.

WITNESS. — (Continuing.) Mr. Casey came back sometime after four; I do not know the exact time. Mr. Casey told me the stuff would be up that afternoon, any minute, and explained how it was *was* coming. He said it was coming saturated in towels, and was sure it would come through because it would not show. He did not say what sort of a towel it would be in; then he left.

At the time I had this conversation with Mr. Casey on December 31, I was not using narcotics. I had not used narcotics since the twelfth of De-

(Testimony of George Cicero.)

cember. I did not take the cure, but had not used any since the twelfth of December. At the present time I am absolutely cured from the use of narcotics.

Cross-examination. (25)

(By Mr. ALLEN.)

WITNESS.—I am not sure when I first met Mr. Casey. I do not know the exact date. It was quite a while before I was arrested. I had met him previous to the time that I was at the City Jail. My mother did not have him come to see me in the City Jail. In fact, he followed my mother all over town. I was in the City Jail accused of forgery—accused of forging prescriptions. I was once convicted of a felony—under the influence of narcotic drugs. I do not remember the date. I was arrested and accused of forgery on or about December 10 or 12. I did not send for Mr. Casey. He did not come to see me. He was not at the City Jail at all. I saw him in the jail office one day when I was visiting my mother. He did not come in with my mother, and I did not speak to him. Later I saw him in the County Jail, and gave him an order for $25.00. This order was signed by Charlie Wilson, and drawn on the superintendent of the jail. I do not remember the date. I asked him to send in some junk, and [30—7] it was sent in in socks. These socks were turned right over to Charlie Wilson. I did not get a bit of it. The next prisoner I called his attention to was Mr. Nel-

(Testimony of George Cicero.)

son. I sent a note out on the 29th through the jailer to have Mr. Casey come and see me. He came on the 31st. It was on that day that I told Mr. Casey, Roy Nelson wanted to see him; that he had $140. At that time I knew that $20 had been deposited to my credit in the jail by Mr. Patterson and Mr. Close, narcotic agents. That arrangement was made on December 29th or 30th. It was after I had asked Mr. Stark to call Mr. Casey. The narcotic officers asked me how the junk came in the other day—meaning the stuff that came in to Wilson, and I told them how it came in. I told them I knew about the $25.00 order, and I had given it to Casey; that it was Charlie Wilson's money. Then I told Mr. Patterson and Mr. Close just how it came in, and that it came in in socks, as I explained before. When the morphine would come in in towels, we would get it out by cutting in piece of towel off, and put water on it, and draw it up in a hypodermic syringe. I have been a user of narcotics for about four years, but I am not using it now, and have not used any since last December. I am painting now—contracting for myself under my own name.

Redirect Examination.

(By Mr COLES.)

I was accused of forging narcotic prescriptions, and have been convicted of the purchase of narcotics.

(Testimony of Gerald V. Close.)

Recross-examination.

(By Mr. ALLEN.)

I have not been tried on the forgery case, and it is still pending.

TESTIMONY OF GERALD V. CLOSE, FOR PLAINTIFF.

GERALD V. CLOSE, being duly sworn, testified: (37) [31—8]

Direct Examination.

(By Mr. COLES.)

I am a Federal narcotic officer, and have lived in Seattle about a year and a half. I know the defendant Thomas J. Casey. On December 29, with Mr. Patterson and an electrician from the Federal Building, I went to the County Jail, and with the permission of the Chief Jailer, installed a dictaphone in the attorney's cage, the receivers being put in a little room called the light room, which is right adjacent to the corner of the attorney's cage. The receiver of the dictaphone was under the seat in the attorney's cage. We bore some holes in the wall of the light room so we could see who was seated in the attorney's cage. We tested the machine out on the 29th and 30th. We waited until about 5 o'clock on the 29th, came back on the morning of the 30th and deposited $20 to the credit of George Cicero. We waited all day on the 30th, and then came back on the 31st. On the 31st of December we again tested the dictaphone, and had

(Testimony of Gerald V. Close.)

a jailer named Anderson listen over it. About 10:20 Mr. Casey came, and I went into the light room. I could see Mr. Casey take the chair and place it in the corridor, and I could see Mr. Cicero come in and sit down in the seat in the attorney's cage. I had one of the receivers of the dictaphone on one ear, and Patterson had the other receiver. We were about three feet away from Mr. Casey and Mr. Cicero. We could hear the conversation with both ears. I heard Mr. Casey say to Mr. Cicero, "How do you feel?" and Mr. Cicero replied, "Pretty bad," and asked Mr. Casey if he could fix him up, and Casey said, "I haven't a thing with me to-day." "Have you any money?" Cicero replied, "Yes, I have $20." Cicero said, "Will you send me up some morphine? You could send it up in the laundry?" and Casey said, "Yes, I will. Give me the order for the $20," and Mr. Cicero said, "Yes, I will give the order for the [32—9] $20." Cicero also said, "There is a man in there, Roy Nelson, who is sick in jail there, and he wants some morphine too. He has $140. Can you fix him up?" and Casey repeated, "$140," and Cicero said, "Yes, $140," and Casey said, "I will fix him up." Then Cicero said to Casey "Send my morphine up in the laundry to-day. You can go out to my house and get some towels or buy some." Mr. Casey said, "I will send the laundry out by messenger to-day." They then said, "Good-bye."

(Testimony of Gerald V. Close.)

In about approximately ten minutes Mr. Casey came back and interviewed a prisoner named Nelson, in the attorney's cage. Casey said to Nelson, "How are you?" and Nelson said, "I am pretty sick," and Mr. Casey said, "Who have you got for an attorney?" and Nelson replied, "Cadwalder." Mr. Casey then said, "How can you employ me if you have him," and Nelson said, "He is no good" he has only tried five or six narcotic cases. Then Mr. Casey said, "I am not knocking him, but you have him sized up about right." Mr. Casey said, "I can get you some morphine if you want me to," and then said to Nelson, "How much money have you got?" and Nelson said, $140." And Casey said, "Will you give me an order for $75?" At that moment Stark appeared there at the end of the corridor and told Casey that there was a woman waiting to see Nelson. Casey asked Nelson where his sister-in-law lived, and Nelson said, "4532 Orcas Street," and Mr. Casey repeated the number. Mr. Casey then said, "I will send your morphine up with George's this afternoon." They then said "Good-bye" to each other. After that we waited a while and returned to our office, and there the laundry containing the morphine was turned over to agent Patterson and myself by the agent in charge, Harry Williamson, and was taken to the City Chemist.

Mr. ALLEN.—I move to strike that there is no connection shown as to what laundry or anything of the kind. [33—10]

(Testimony of Gerald V. Close.)

The COURT.—The motion is denied.

WITNESS.—Then I accompanied agent Patterson to the District Attorney's office where a complaint and the necessary papers were made out to issue a warrant.

We obtained a search-warrant, and I went in company with agent in charge, Harry V. Williamson, and Inspector Engle, to Mr. Casey's office, and searched the office, and in the presence of Engle and myself, the agent in charge found some towels.

IDENTIFICATION.

Government's Exhibit 3, marked for identification, is a paper that was taken from the office of Mr. Casey, on which is written "Fred Nelson, 4534 Orcas Street." And at that time I initialed the paper.

Government's Exhibit 5, 6 and 7, are handkerchiefs which were found by narcotic agent in charge in my presence at Mr. Casey's office.

Government's Exhibit 8 is a pair of socks found by the narcotic agent in charge, at Mr. Casey's office.

Government's Exhibit 10 is the wrapper that was around the laundry that was turned over to agent Patterson and myself by the agent in charge.

Government's Exhibit 11 is a bath towel which was turned over by narcotic agent in charge to Patterson and myself, and taken to the City Chemist for analysis.

Government's Exhibit 12 is a bottle that Mr.

(Testimony of Gerald V. Close.)

Patterson and I received from the City Chemist, Jacobson, after we had turned the towel over to him to be analyzed.

Government's Exhibit 13 is another towel which was in the package of laundry.

Government's Exhibit 14 is the morphine extracted from the towel by City Chemist Jacobson. [34—11]

Government's Exhibit 15 is a towel taken from the package of laundry.

Government's Exhibit 16 are three handkerchiefs taken from the same laundry.

Cross-examination.

(By Mr. ALLEN.)

We were sitting three feet away from the defendant when he was talking with Cicero. They talked loud enough so I could hear them. Neither of them whispered. They used the word "morphine" two or three times. There were several holes in the thin partition about the size of a pencil, and I looked through and I could see Cicero. These handkerchiefs, referring to Government's Exhibit 16 were found in the package containing narcotics.

As to the conversation I heard between Casey and Cicero, it would not have been necessary to have the dictaphone to hear it.

Q. And in the conversation, apparently, as far as you could judge, there was no effort made by either Mr. Casey or Mr. Cicero, or Mr. Casey or Mr. Nelson, to lower the voice, or to speak privately or secretly?

(Testimony of Gerald V. Close.)

A. The conversation was in the normal tone of voice right straight along.

In the conversation between Nelson and Casey there was nothing said about fees. Casey asked for money to buy morphine with. Nothing was mentioned about $500. Nelson didn't ask Casey anything about what he would charge him. Casey asked him how much money he had after he had suggested to him he would bring him up some morphine. Nelson did not know we were listening to his conversation. Cicero knew. But nothing was suggested to him as to what he (Cicero) should say, or where he should sit in the cage, and nothing was said to Cicero about the tone of voice he should use in discussing the matter. We did not tell Cicero the purpose for wanting to hear the conversation between him and Casey. It was perfectly obvious to him, but to my knowledge he was not told anything about it. He knew we were there to [35—12] catch Casey for smuggling stuff into the jail.

When we searched Casey's office at No. 213 Melhorn Building, we did not find any narcotics or any trace of them. We did find some towels. I didn't see any wash-bowl and basin, but would not say there wasn't any. I saw no iron, or ironing board. We made a thorough search. It was approximately eight o'clock in the evening. The socks and handkerchiefs we found in the office were examined and nothing was found in them.

TESTIMONY OF DR. F. E. DENT, FOR PLAINTIFF.

Dr. F. E. DENT, being duly sworn, testified:

Direct Examination.

(By Mr. COLES.)

I am a physician and surgeon, licensed to practice in the State of Washington. In my experience and practice as a physician I have treated narcotic addicts for about four years. I examined the witness George Cicero about nine o'clock this morning and in my opinion state that, at the present time, Cicero is not using narcotics. The marks on his arm are not new.

Cross-examination.

(By Mr. ALLEN.)

Morphine can be taken in the mouth as well as by injection. From my practice and experience, I find that users of narcotics are not very truthful. They are very unreliable when using the drug.

Redirect Examination.

(By Mr. COLES.)

When a person stops using narcotics, he is not any more untruthful than anyone else. [36—13]

Recross-examination.

(By Mr. ALLEN.)

When a person is a narcotic user, they will lie

(Testimony of Mrs. Frances Nelson.)

to get it. Physicians sometimes prescribe small doses of opiates to addicts as reduction treatment.

TESTIMONY OF MRS. FRANCES NELSON, FOR PLAINTIFF.

Mrs. FRANCES NELSON, being duly sworn, testified:

Direct Examination.

(By Mr. COLES.)

I have lived in Seattle eleven years. I am married. I am the sister-in-law of Roy Nelson, a prisoner in King County Jail. I was visiting him on December 31, 1925; while I was talking to him, Mr. Casey came around there and said he wanted to see Roy Nelson; said he was a lawyer. I said, "My brother-in-law already has a lawyer," and he said he wanted to see him for a few minutes. I then waited while my brother-in-law talked with Mr. Casey, and when they came out together, I said, "Roy, what does this gentleman want?" and he said, "He wants $100." When I asked him what he wanted $100 for he said, "This is the man that supplies all us boys with narcotics whenever we want it," and he said, "I gave him an order." Then Mr. Casey gave me his card, and said he would see me on the outside. I made arrangements with Mr. Casey to go to his office after leaving the jail, and then I went to see the lawyer I had employed for my brother-in-law. From there I went up to see Mr. Williamson at the narcotic office, and then I went to Mr.

(Testimony of Mrs. Frances Nelson.)

Casey's office. When I arrived at his office the outside door was shut, and I knocked and the door was opened, and he asked me about my brother-in-law. I asked him what he could do for my brother-in-law, and he asked me if I could get $500 to supply, to keep my [37—14] brother-in-law going. I took good notice of the office, and it consisted of clothes and things like that hung up, and the wash-bowl. After we talked he asked me how much it would take to quiet my brother-in-law and I said it would take quite a lot, and he said, "I am sure this will do this time, and I will take more to-morrow," and I took the bundle and left there and brought it back to the narcotic office. I saw in Mr. Casey's offices an ironing board, and some clothes and some packages, and also saw an iron.

IDENTIFICATION.

Government Exhibit 10 is the paper that the bundle was wrapped in, when I took it to the Narcotic office.

Government Exhibits 13, 15 and 11 are all towels that were in the bundle of laundry.

Government Exhibit 16 was also in the package of laundry.

I had a conversation with the defendant; he told me that he had had seventeen narcotic cases, and out of that number he had won about fourteen. He told me that he supplied them with narcotics any time they wanted it; no matter what they wanted, he always got it to them.

(Testimony of Mrs. Frances Nelson.)

Q. "Did he make any statement on that day, at that place in the office as to how long he had been supplying the prisoners?

A. "What was that statement"?

Mr. ALLEN.—I object to that as incompetent, irrelevant and immaterial.

He said he had been furnishing them for the last seven or eight months; he also stated that day in his office that he had other deliveries to make and he didn't have time to make this one himself, and after he gave me the package I took it back up to the narcotic office. Mr. Hoffman and Mr. Ballaine were [38—15] present, and they opened it.

Cross-examination.

(By Mr. ALLEN.)

I have lived in Seattle eleven years. My husband is a longshoreman. I have not been married before and I am a sister-in-law to Roy Nelson. I don't know how long he has been an addict. I have been his sister-in-law for four years, and he has been an addict a part of that time. I have never used narcotics myself, nor have I ever got any for him. When I was up visiting Roy, I asked him (referring to Casey) who he was; he was standing next to me, and Roy told me he had given him $75. He said he wanted $100. I told Casey we already had a lawyer. I asked Roy what he gave it to him for, and he said, "This is the man who supplies us boys with narcotics," and we talked in an ordinary tone of voice, just as I am now.

(Testimony of Mrs. Frances Nelson.)

Mr. Casey waited for me outside. I went to Casey's office about 2:30—could not get in; went back again about fifteen or twenty minutes later. There was nobody waiting to get in his office the first time. When I came back the second time I saw a Japanese or Chinaman in the office. I did not see anybody else in there. I did not see any lady there. I was the only lady there. I had no package at all in my hand when I went back to his office the second time. When Mr. Casey gave me the package it was not torn. He wrote on the package in pencil when he handed it to me, "Roy Nelson, King County Jail." He said he could not take the package up because he did not want to be implicated in taking it to the County Jail. I told him I would take it. From Mr. Casey's office I went to the Narcotic office. Roy never lived in Ballard. I never lived there.

TESTIMONY OF ROBERT J. HAWKINS, FOR PLAINTIFF.

ROBERT J. HAWKINS, being duly sworn, testified: [39—16]

Direct Examination.

(By Mr. COLES.)

My name is Robert J. Hawkins. I live at No. 1820 Jackson Street in the city of Seattle. I have lived here for 22 years. I was in the King County Jail in 1925 on a misdemeanor charge. While I was in jail I was a trusty. I went in on the 14th

(Testimony of Robert J. Hawkins.)

day of November, and was there sixty days, and during that time I saw the defendant Mr. Casey several times. On the 18th or 19th of September, which was Sunday, I believe, laundry was given to me to deliver to a prisoner; that was a part of my duties. Any time anything came in, I was called and I would give it to the person it was for. On December 18 or 19, a package of laundry was given to me to be given to a prisoner named Wilson, and I delivered the laundry to him.

Q. What did Wilson do after he got the laundry.

Mr. ALLEN.—I object to that as immaterial, unless Mr. Casey was there.

The COURT.—The objection is overruled. You are not asked to detail what Wilson said, but what he did.

A. He took this laundry into his mouth and fell over on his bunk and began to suck on one of these socks. At first he did not find what he was looking for.

Mr. ALLEN.—I object to that as stating his conclusion.

The COURT.—Sustained.

Q. What did he do.

A. He fell over on his bed and was sucking on this sock when I walked away.

I was in King County Jail in the same capacity on December 31, 1925, and in the afternoon, around four o'clock or such matter, I saw Mr. Casey. At that time I had a conversation with [40—17] him in which he asked me if I was the head trusty,

(Testimony of Robert J. Hawkins.)

and I said "Yes." He said, "It is your duty to deliver packages and such as that that comes to the boys?" and I said, "Yes." He said, "Do they get everything that is sent up to them?" and I said "As far as I know they do." He wanted to know if there had been any laundry or clothing brought up that day to Cicero or Nelson, and I told him I hadn't delivered any. That was about the length of our conversation. I didn't see him talk with Cicero.

Cross-examination.

(By Mr. ALLEN.)

I live at 1820 Jackson Street. I have been a painter for the last six years, working practically for myself. On the 15th of November I entered the King County Jail to serve out a 60-day sentence for a misdemeanor. I was there about three days when I was made head trusty. I didn't deliver packages to the prisoners without their going through the jailer's hands. The jailer opened and examined them all. It was against the rules to deliver any package to anybody, even an envelope, without the jailer seeing it. It was against the rules for a lawyer or anyone else to deliver to the prisoners anything without the jailer's consent and knowledge. They have a large sign up in the jail publishing that fact, and the fact that if anyone did that would be forbidden the use of the jail or the right to come to the jail. All I know about this is that on the 18th or 19th of December

(Testimony of Robert J. Hawkins.)

a package came through for Wilson. I had nothing to do with it at all after the jailer had got through with it. They push a button and call me and I deliver the package after they have examined it. The jailer called me to his office, and said, "Take this package to Wilson." [41—18] I took it to Wilson, and Wilson grabbed it and commenced to suck or chew on one of the socks. On the 31st day of December, Mr. Casey came there later in the afternoon, around four o'clock, maybe later. He asked if I had taken anything in to Roy Nelson or George Cicero. He found out from me that if any package was delivered it would come through my hands, and he asked me if a package had been delivered for Nelson or Cicero. I told him I had not delivered any, and he went away. I did not see the party who delivered to the jail the package I took in to Wilson on the 18th or 19th of December, and I do not know who it came from.

TESTIMONY OF J. A. ANDERSON, FOR PLAINTIFF.

J. A. ANDERSON, being first duly sworn testified:

Direct Examination.

(By Mr. COLES.)

I have lived in Seattle about eight years, and I am a jailer in the King County Jail, and was there in December, 1925. I saw Mr. Patterson and Mr. Close in the King County Jail on the morning of

(Testimony of J. A. Anderson.)

the 30th when I came to work about nine o'clock. I saw Mr. Patterson and Mr. Close in the jail on the 31st day of December, and I saw a dictaphone which they had installed in the light room of the jail. The transmitter was in the first little stall next the light room. I listened over the dictaphone and could hear very plainly anything that was said over it, even a whisper. I went to the light room after they had installed this dictaphone and saw some holes in the partition. I saw a crack and some little holes which I looked through. I could see anything in the little stall next to it. I was on duty on the 31st of December when [42—19] Mr. Casey arrived, and I let him in. Before I did so I told him to wait a minute. Mr. Patterson and Mr. Close were in the office and I went in and told Mr. Stark that Mr. Casey was at the door, and he said, "Wait a minute." He put Mr. Patterson and Mr. Close in this little light room and locked them in. I stayed next the office. I saw Cicero going back and forth and Casey was talking with him in the attorney's cage; they were the only ones in the attorney's cage at the time. After Mr. Casey talked to Cicero he came out and got an order for $20.00 in my presence. I saw Mr. Stark give him the $20. After he got the money he wanted to see Roy Nelson who was visiting his sister-in-law at the time. I got Nelson out of the visiting cage and put him in the attorney's cage, and Mr. Casey had a talk with him for a short time. When they were through Mr. Casey came

(Testimony of J. A. Anderson.)

out, and he had an order for $75. Mr. Stark told Mr. Casey that the boy did not have that much money, and he did not think the boy knew what he was doing, so he made an order out for $50 and turned it over to Mr. Casey in my presence. Mr. Casey then left. I saw Mr. Casey again at about four o'clock in the afternoon.

Cross-examination.

(By Mr. ALLEN.)

The receivers of the dictaphone were placed in the light cage, and the transmitter was in the attorney's cage. You could hear the conversation perfectly, even without the dictaphone. I could see Cicero and Nelson when they were in the cage talking to Casey. I was just outside the little court leading into the joiler's room from the end of the attorney's cage. I was 25 feet away from them. I did not hear any of the conversation. [43—20] When Mrs. Nelson and Roy were talking I was walking up and down the corridor, sometimes seven or eight feet from them. I was attending to my duties. It was visiting day, and there were quite a number of visitors there, and I did not hear any of the conversation which took place between Mr. Casey, Roy and Mrs. Nelson. Shortly after the conversation with Roy and Mrs. Nelson, Mr. Casey left.

TESTIMONY OF C. M. HOFFLAN, FOR PLAINTIFF.

C. M. HOFFLAN, being first sworn, testified:

Direct Examination.

(By Mr. COLES.)

I am a Federal Narcotic Agent, and I was in the Post Office Building in December 31, 19 and 25 in the P. M. I saw Mrs. Nelson there that afternoon. I talked with her for a while and she went away and was gone for some time. Some time later she came back with a parcel of laundry and turned it over to Inspector Ballaine and myself.

Government Exhibit 10 is a piece of paper that this parcel was wrapped in.

Government Exhibit 11 is one of the towels in this package which we tested for morphine and turned over to Mr. Williamson.

Government Exhibit 12 is a bottle containing the solution that we took from the towel of Government Exhibit 11.

Cross-examination.

(By Mr. ALLEN.)

I identify these exhibits by the marks that were put on them at the time we took them out of the parcel of laundry. This was done in the office before we turned them over to Mr. Williamson. We got the package directly from Mrs. Nelson. We were [44—21] in Mr. Williamson's office.

(Testimony of C. M. Hofflan.)

Mr. Ballaine is a chemist, and he made the test that I spoke of. We made a test of just one towel, Exhibit 11. There were three towels and two or three handkerchiefs in this laundry package. That is all I remember being in that package. There was a name written on the wrapper in pencil. The name was "Roy Nelson," King County Jail. I do not know who wrote in green ink on the package, "F. B. Nelson 1:45 o'clock, December 31, 1925." W. J. P. are Patterson's initials; N. V. W. are Williamson's initials, and H. W. B. are Ballaine's initials. I do not know whether I put mine on there or not. I am sure that this package was delivered to me by Mrs. Nelson. Other than what Mrs. Nelson told me I have no personal knowledge of where the package came from.

TESTIMONY OF H. W. BALLAINE, FOR PLAINTIFF.

H. W. BALLAINE, being duly sworn, testified:

Direct Examination.

(By Mr. COLES.)

I am a Federal Narcotic Inspector, and have been since October 29, 1921. I am a graduate chemist and a licensed pharmacist.

Government Exhibits 13, 15, 16 and 11 all came from the package of laundry delivered by Mrs. Nelson.

Government's Exhibit 11 is a towel from which we made an acqua solution and tested it.

Government's Exhibit 12 is a bottle containing

(Testimony of H. W. Ballaine.)

the acqua solution—morphine sulphate. We did not make a quantitative test, just a qualitative; that was the only article in the laundry that we tested. After making this test we turned the package over to Mr. Williamson. [45—22]

Cross-examination.

(By Mr. ALLEN.)

I marked the towel. When the package was opened I examined the towels; they were dry and warm. It reminded me of laundry that had just come from the laundry after it has been ironed and was warm, and I wet the towel and wrung it out. Other than what someone told me, I have no personal knowledge where the package came from.

TESTIMONY OF L. A. ENGLE, FOR PLAINTIFF.

L. A. ENGLE, being duly sworn, testified:

Direct Examination.

(By Mr. COLES.)

I am a Federal Narcotic Inspector and I have been such for two years. On the 31st day of December, I accompanied Agent Harry V. Williamson and J. V. Close to Casey's office, which is Room 213, Melhorn Building, and there in the presence of Close and myself, I saw Williamson pick up some socks and some handkerchiefs and a newspaper off a table.

(Testimony of L. A. Engle.)

Government's Exhibits 4 and 9 are towels that were found in Mr. Casey's office.

Cross-examination.

(By Mr. ALLEN.)

We had a search-warrant. It was about eight o'clock in the evening, or a little later, on the 31st day of December. We were searching primarily for narcotics, but we did not find any. The handkerchiefs which were found there, which I have identified, had a monogram "N" in each corner. I have no knowledge of anything there but what I saw in the office.

TESTIMONY OF OLGA EVANSON, FOR PLAINTIFF.

Miss OLGA EVANSON, being duly sworn, testified: [46—23]

Direct Examination.

(By Mr. COLES.)

I am a clerk in the office of Narcotic Agent in Charge Harry V. Williamson. I have been there for two years. I know the defendant Thomas Jefferson Casey and have seen him come to the office. On the 31st day of December, 1925, I saw Mr. Casey coming out of the Rhodes' five and ten cent store. It was about noon. I fixed that particular time by the fact that on December 31 I was on my vacation, and I came down to sign my pay voucher as it was pay day.

(Testimony of Olga Evanson.)

Cross-examination.

(By Mr. ALLEN.)

No one had asked me to watch to see if I would see Mr. Casey. I did not make a memorandum of the fact, but it was again called to my mind when I returned to the office January 2. I do not remember what kind of clothes he was wearing when I saw him.

TESTIMONY OF R. T. REESE, FOR PLAINTIFF.

R. T. REESE, being first duly sworn, testified:

Direct Examination.

(By Mr. COLES.)

I have lived in Seattle five years. I am buyer for Rhodes Bros. 10-cent store, and was in December, 1925. Government's Exhibits 9 and 11 are towels identical to those we have in our store. These towels are not as common as an ordinary white towel, and we have some of the identical towels in our store at the present time. The towels in our store which are identical to these exhibits which you have handed me were bought in the latter part of November, or first part of December. [47—24]

Cross-examination.

(By Mr. ALLEN.)

We bought them from the Western Wholesale Dry Goods Company; they did not manufacture them for us; they are stock towels.

(Testimony of Walter James Patterson.)

I would not say that they had not sold the same kind of towels to other department stores.

TESTIMONY OF WALTER JAMES PATTERSON, FOR PLAINTIFF.

WALTER JAMES PATTERSON, being duly sworn, testified:

Direct Examination.

(By Mr. COLES.)

I have been a Federal narcotic agent for several years; three years of that time in Seattle. I know the defendant Thomas Jefferson Casey, and have talked with him at the office and other places. On the 29th of December I installed a dictaphone in the King County Jail. It was installed in the little room adjacent to the attorney's cage, and the receivers were put in this little room. On December 30th Agent Close and myself deposited $20 to the credit of George Cicero. We concealed ourselves in the light room and waited; Mr. Casey came about 10:20 A. M. He first interviewed George Cicero, and asked him how he was feeling. Cicero asked Casey if he could fix him up. Casey said, "I haven't a thing with me," and Cicero said I have $20. And Cicero told Casey that he could get a towel and some socks and send them up to-day and soak them with morphine. Casey said, "I will." Then Cicero told Casey that there was a party named Nelson back there and that he wanted to get fixed up too, and that he had $140. Cicero

(Testimony of Walter James Patterson.)

asked Casey if he would fix him up, and Casey said he would. Then Casey said to Cicero, "I will send your stuff up in the laundry to-day by messenger." And they left. [48—25] About twenty minutes later, Casey returned to the attorney's cage, and interviewed a Roy Nelson. Casey asked Roy Nelson who his attorney was, and Nelson replied, "Attorney Cadwalder." (Further testimony by witness same as related by Agent Close. Bl. of Ex., p. 8.)

When we went back to the office, Agent in Charge Williamson turned over a bundle of laundry, and I took it to the City Chemist Mr. Jacobson, who made a test and said that the laundry contained morphine. After this test was made, we turned it back to Agent Williamson.

Deputy United States Marshal Smith and a newspaperman by the name of Chalcraft and myself went out to Casey's house and placed Mr. Casey under arrest. This was about eight o'clock in the evening. While we were driving down in the car, Mr. Casey stated to Chalcraft, "I admit that I went up and talked with them," and he said, "Lots of times I promise drug addicts stuff just to make them feel good."

Cross-examination.

(By Mr. ALLEN.)

There was never any ill feeling engendered between myself and Casey over the Gleason case. I recall the Gleason case. I had a talk with the de-

(Testimony of Walter James Patterson.)

fendant's brother at the Rehan Apartments. In the course of conversation his brother asked me if I knew the defendant Tom, and I said to him, "The attorney?" and he said, "Yes," and I said, "Yes, I do. He has quite a few narcotic cases." His brother then said, "He is no attorney—he is a crook." I suggested the installation of the dictaphone in the jail, and also deposited $20 to the credit of Cicero, and told him that when Mr. Casey came up, to order some stuff and I would give Cicero the money for it. [49—26]

I know that an addict will do almost anything to get morphine. The conversation between Casey and Cicero was loud enough so that we could hear it without a dictaphone. We were about three feet away from where they were talking. There was between Casey and Cicero while they were talking a screen of very fine mesh, so small that nothing could be passed through it. After we had arrested Mr. Casey at his home on the evening of December 31st, Mr. Casey in a conversation with Mr. Chalcraft said, "I will admit I was talking with Cicero and Nelson and I will admit I tell them fellows just to console them that I will get them morphine." On the way down to jail Mr. Casey wanted to see Agent in Charge Williamson to explain the matter. I told him he could see Williamson at the county jail.

TESTIMONY OF ALBERT JACOBSON, FOR PLAINTIFF.

ALBERT JACOBSON, being duly sworn, testified:

Direct Examination.

(By Mr. COLES.)

I am a chemist. I am a graduate of a qualified school of chemistry, and a licensed pharmacist in this state. I have been City Chemist for twenty-one years.

Government Exhibit 12 is a bottle, the contents of which I have analyzed and found it to contain three and four-tenths grains of morphine hydrochloride.

Government Exhibit 14 is a towel which I have examined for the presence of morphine hydrochloride by soaking an end of it with water, and then squeezing it, and the liquid from this towel contained .153 grains of morphine.

Government Exhibit 15 I also examined, and it contained only a trace of morphine. Agent Patterson turned these towels over to me. There was no morphine in any of the rest of the laundry that was turned over to me. [50—27]

TESTIMONY OF HARRY V. WILLIAMSON, FOR PLAINTIFF.

HARRY V. WILLIAMSON, being duly sworn, testified:

Direct Examination.

(By Mr. COLES.)

I am narcotic officer in charge. I have been a federal narcotic officer for eleven years. I was in my office on the afternoon of December 31st, but was not there when a package was brought up by Mrs. Nelson on that day. I arrived about five o'clock. Mr. Ballaine and Mr. Hoffman turned over a package to me which was wrapped in Government Exhibit 10. It was soaking wet. At the time I did not see the writing on it, and several days later when it was called to my attention I had to use a magnifying-glass to see it. The package has been in my possession at all times, except when it was turned over to the chemist for tests.

Government's Exhibit 12 contains an aqua solution which I tested and found contained morphine.

After the package was tested by the chemist it was returned to me by Mr. Patterson and Mr. Close, and has been in my possession ever since.

On the evening of December 31st, with a Federal search-warrant, I went to Mr. Casey's office where we found a newspaper, a sack containing a pair of socks, two bath towels, and three handker-

(Testimony of Harry Williamson.)

chiefs. They are Government's Exhibits 3, 8, 4, 5, 6, and 7.

Cross-examination.

(By Mr. ALLEN.)

Government's Exhibit 10 was wrapped around the laundry. The package was wet, having absorbed the moisture from the towel that Inspector Ballaine had put in water. F. B. Nelson—was written in green ink on the package when it was turned over [51—28] to me. I did not say that 1:45 was there, but that the green writing was there. No one has written anything on it since it has been in my possession with the exception of my initials, that is, Government Exhibit 10, the paper in which the laundry was wrapped. The pencil writing on the paper was "Roy Nelson, King County Jail" and was not called to my attention until after it was returned from the chemist. Mr. Patterson called my attention to it, and he told me that Mrs. Nelson had informed him that the defendant wrote those words in her presence. I have not had the writing examined by a writing expert. When we searched Mr. Casey's office, we found no narcotics.

(Here witness excused.)

At this time Government Exhibit 1, which was an order by Cicero for $20, was admitted by the Court.

Government Exhibit 2 is an order for $50, given by Nelson to the defendant, and was offered in evidence and admitted without objection.

(Testimony of A. P. Casey.)

Government Exhibit 3, a copy of a "P–I," was offered in evidence and admitted without objection.

Government Exhibits 4, a towel, and 5, 6 and 7, handkerchiefs, and Government Exhibit 8, a pair of socks, and Government Exhibit 9, a towel, all found in Mr. Casey's office were offered in evidence, and admitted, over objection.

Government Exhibits 10, 11, 12, 13, 14, 15, 16, and 17 were all offered and admitted in evidence without objection. [52—29]

(Government rests.)

DEFENDANT'S TESTIMONY.

TESTIMONY OF A. P. CASEY, FOR DEFENDANT.

A. P. CASEY, being duly sworn, testified:

That he was manager of the Rehan Apartments and was a brother of defendant. That he had a talk with W. J. Patterson in November, 1925. Patterson rented an apartment from the witness and made a deposit of $5.00. Later withdrew the deposit and had a long conversation with witness. Patterson asked him if he was a brother of Tom Casey. When witness said yes he was and said that Tom was crazy over baseball. Patterson then said yes that he is crazy over baseball and that is not the only thing he is crazy over, he is crazy on this good-fellow stuff. "He don't good-fellow Patterson any more; he double-crossed me and I will get him for

(Testimony of A. P. Casey.)

it." I was surprised when emotion flamed up in his face as he said that.

Objected to. Sustained.

His face from having just an ordinary look of neighbourly interest, became angry for a moment and just as quickly was gone. I never said to Mr. Patterson that Tom was a crook in any shape, manner or form.

I made a diagram of the defendant's office at 213 Melhorn Block, which is drawn to scale. (Diagram marked Exhibit "A–1.") The room is 17x12 feet. You can readily hear the tearing of a paper through that partition, the board walls seem to accentuate the sound rather than deaden it.

On the *reverside* of "A–1" I drew a diagram of the County Jail, which is also drawn to scale. A jailer is constantly at the door; lets *you upon* request, to whom you state your business. The door is covered by a steel mesh. Another attendant admits you through a door to the Jail Superintendent's office. Several attendants are there. A sliding door, likewise a steel bar can be released by electrical contact and across each is likewise a screen of this mesh. In the attorneys' corridor are compartments about 30 inches wide having a little screen partition. In front of this entire corridor is a steel wire screen having 26½ openings per square inch. (Exhibit "A–1" and "A–2" admitted in evidence.) [53—30]

(Testimony of A. P. Casey.)

Cross-examination.

There was no thought of crookedness in connection with Mr. Patterson's statement about Tom or in my statement. He said Tom Casey had double-crossed him and he would get him for it.

That conversation was brought forcibly to my mind when I read in the paper about Tom Casey being arrested. It then appeared a serious matter.

Redirect Examination.

I was in defendant's office just before Christmas last year. I never saw an ironing-board or an iron in his office at any time.

ARTHUR E. GRIFFIN, Superior Court Judge for eight years.

C. E. CLAYPOOL, Superior Court Judge for six years.

JOHN McQUADE, Capitalist.

THOMAS A. O'GORMAN, Salesman.

T. M. ROYCE, ALBERT D. MARTIN, FRANK F. RANDOLPH, Attorneys, testified:

That they had known defendant well for 15 to 20 years. That each of them knew his character for truth, honesty, and integrity, and for his being an upright, honorable, and law-abiding citizen, and each testified that his character was the best. That prior to the charge made in the indictment herein they never heard anyone speak ill of him in any way.

TESTIMONY OF ALBERT D. MARTIN, FOR DEFENDANT.

ALBERT D. MARTIN, further testified:

That he had been practicing law 26 years, and had defended a great many prisoners. That he had often visited the King County Jail for many years. That attorneys are not allowed to come in personal contact with the prisoners except in the jail office. That it would be impossible to give any packages to the prisoners, as the screen separating the attorneys from prisoners is so fine that you could not put a match through it.

TESTIMONY OF HANS JACOB HOFF, FOR DEFENDANT.

HANS JACOB HOFF, being duly sworn testified:

That he was 49 years old. That he was Chief Examiner of mail in the Postal Federal Censorship. Had worked for the Intelligence Division of the Army & Navy. I am a college graduate. Have an A. B. from Kansas, and studied a year in the Texas University and a year in the Missouri University. I had 2 years in the University of Berlin, Germany, and a Ph. D. Degree from an Illinois University since 1908.

My main work as an expert on handwriting came in connection with the war where I examined hun-

(Testimony of Hans Jacob Hoff.)

dreds of pieces, codes of all [54—31] kinds, and many important and unimportant documents.

I examined Exhibit 10 last Saturday at defendant's request. I also examined Exhibits 1 and 2.

Exhibits 1 and 2 were not written by the same person who wrote "Roy Nelson, King County Jail" on Exhibit 10. It is blurred more now than it was last Saturday, but it can be sufficiently seen to determine it.

Cross-examination.

Exhibits 1 and 2 were written by the same person. Our handwriting depends a good deal on the time of day, the condition of our mind and the condition of our stomach, etc.

TESTIMONY OF DAVID H. LEE, FOR DEFENDANT.

DAVID H. LEE, being duly sworn, testified:

I have lived in this city 25 years. I now live a mile and one-half north of the city limits at 85th Street. I own a lot of property at Lake City. I saw defendant on December 31st, 1925, at Morningside, just this side of the first crossing, the other side of the Williard Hotel, north of the City. It was about a quarter to 12 A. M. Defendant was with 2 or 3 other persons. They were driving north towards Lake City. I was coming into Seattle.

Cross-examination.

I am not a lawyer. Casey beat me in a lawsuit

(Testimony of David H. Lee.)

about fifteen years ago. I maybe have spoken to him three times since. I know it was a quarter to 12 because I come every day to the city on the 10:30 bus that passes my place. I missed the bus and walked down to the store to see if Mr. Sumner was going in, to ride with him. He had already gone in and I started on foot for the car line. I got down town at half-past 12. I had a date at 12 o'clock. I was a half hour late.

My attention was called to this when I saw in the papers next day about it. I saw the article in the "P–I," next day about Tom Casey being arrested.

TESTIMONY OF DR. GEORGE R. MARSHALL, FOR DEFENDANT.

Doctor GEORGE R. MARSHALL, being duly sworn testified:

I am a physician and surgeon for the past seven years. A [55—32] graduate from a Medical College, the University of Washington and the University of Craig, Omaha. I have treated addicts in the Seattle City Hospital in 1919–1920.

Government admits the witness is a qualified physician and surgeon.

I would say it is my personal opinion that addicts are unreliable. I do not believe that I would believe any of them.

Cross-examination.

If a sufficient amount of time had elapsed after

(Testimony of Leo Casey.)

they quit using the drug, say 5 to 10 years as a minimum, an addict might talk normal again.

TESTIMONY OF LEO CASEY, FOR DEFENDANT.

LEO CASEY, being duly sworn, testified:

I am a brother of the defendant. Ten brothers are living. I live at 310–21st Ave. North. Defendant came to my place about 10:30 A. M. on December 31st, 1925. I was associated with him from that time until 1:30 or 2:30 P. M.

We went from my place to 2933 Franklin Avenue and picked up a prospective buyer for some property at Lake City. It was Mr. Camp. We drove north and met Mr. Lee in the road between the old Bothwell Highway and the New Victory Way at Morningside.

Cross-examination.

Q. What did you mean about 10:30 A. M.?

A. A variation of 10 or 15 minutes either way. We were out there the day before New Year's Day to sell this property. My brother P. H. and Tom and 2 other gentlemen were with us. One was Mr. Camp, who wanted to see the property. We expected to sell the property at Lake City to him.

TESTIMONY OF LETHIA J. KNIGHT, FOR DEFENDANT.

LETHIA J. KNIGHT, being duly sworn, testified:

That her former husband, Dr. M. G. Young, died in 1917. I married my present husband, Mr. Knight, in 1923.

Dr. Young was the originator of Dr. Young's herb remedies and organized Dr. Young Herb Co. I learned the business and live at 736 North 73 Street, where I have a laboratory. I have had an [56—33] office at 213 Melhourn Bldg., since 1919. My office hours are between 2:05 P. M. I had a little partition put in so I could have a private room. It was made of plaster-board or something of that kind. I always keep towels in the office and use them for my patients. Different kinds of Turkish towels, I have had towels which look exactly like Exhibit 4. After Dr. Young died, Mr. Bents and myself handled the company for two years. Mr. Bents withdrew and I was obliged to take another partner to keep the Company alive. Mr. Casey was recommended to me as a good business man and I took him in and he took part of the stock. He was formerly in the New York Block until they tore it down.

I know defendant's habits. On several occassions I have seen his handkerchiefs in the drawers. One or 2 times a bundle of laundry was delivered

(Testimony of Lethia J. Knight.)

there from the laundry. Many times he would leave an old handkerchief and get a clean one.

I used the towels in giving hot and cold applications. I bought all the towels myself.

I remember when Mr. Casey was arrested. It was New Year's Eve. It was in the paper New Year's Day. I saw Mr. Casey 2 or 3 times the day before. I got to my office about 2 o'clock and saw Mr. Casey and Mrs. Traynor in the office. That was December 31st, 1925. Mrs. Traynor was waiting to see me, she sat in the outside office. Mr. Casey went in the inner office and Mrs. Traynor and I sat down to talk. While we were there a large fleshy lady came in to see Mr. Casey. She went directly into Mr. Casey's office; she had a package in her hand. It was kind of bulky and was wrapped up in light brown paper. Government's Exhibit 10 looks like the color of it. I could hear every word that was said. This lady said to Mr. Casey; "I am Roy Nelson's sister-in-law" or "I am Roy's sister-in-law, Mrs. Fred Nelson." She said, "I have a package here I should like to have you take up to the jail for Roy." Mr. Casey said, "I cannot do that, Mrs. Nelson, I am not going up to the jail this afternoon." [57—34] She said, "You promised to go up; you promised to get Roy some stuff. Are you not going to get it for him?" He said, "No, I am not going to get it; I had no intention of getting it. I said that to satisfy his mind and make him feel easy. I could not and would—get anything of the kind. She said, "Roy

(Testimony of Lethia J. Knight.)

is in a terrible shape, and he said, "If he is in that bad a shape get a doctor and he will relieve his condition." Mr. Casey said, "Under no consideration will I take it up." And she went out with the same package still in her possession.

After she left Mr. Casey said to Mrs. Traynor and myself, "What do you think of that? Isn't that a great proposition to make to anybody?"

Mr. COLE.—I object to that and ask that it be stricken.

The COURT.—It may be stricken.

Mr. ALLEN.—Noted an exception.

There was no ironing-board or iron in that office on December 31, 1925, there never was any there.

Mrs. Traynor, Mr. Casey and myself were the only persons in the office when Mrs. Nelson was there. There was no Japanese or Chinese in the office at any time.

Cross-examination.

I have lived in Seattle 29 years. I do not administer medicine. I sell the medicine and sometimes use hot towels when necessary. I use the office as much as Mr. Casey did. I kept a half dozen or a dozen towels, and often used them to put hot applications in case of severe pain for immediate relief only.

The lady that came into the office that time was Mrs. Nelson, whom I have seen here in the courtroom.

Mr. Casey told Mrs. Nelson that if Roy was feel-

(Testimony of Lethia J. Knight.)

ing so bad she should get a doctor for him, She said, "I have some stuff here in this package, but it is not enough." [58—35] He said he could not take it under any consideration.

Redirect Examination.

There are no electric plates or stoves or flat-irons or anything of that kind upon which you could warm an iron in that office.

TESTIMONY OF ELLA TRAYNOR, FOR DEFENDANT.

ELLA TRAYNOR, being duly sworn, testified:

I am past 50 and married. I am defendant's sister. I have lived in Seattle 22 years. My husband is a carpenter.

I had a growth on my chest and several Doctors told me I should have to undergo an operation. I went to consult Mrs. Knight on December 31st, 1925, and get herb medicine. I went about half-past 1 P. M. No one was in and I waited in the hall. While I was there a stout lady came and tried the door. That woman was Mrs. Nelson. I did not see her since, but have seen her here in the courtroom. Mr. Casey came first. I went in and sat down and waited for Mrs. Knight. After a few minutes she came. I was talking with Mrs. Knight when this stout lady appeared again. She went straight in to Mr. Casey's office and introduced herself to Mr. Casey as Mrs. Nelson. She said I am Mrs. Fred Nelson and I think she added

(Testimony of Ella Traynor.)

I am Roy's sister-in-law. She wanted to know if Mr. Casey would take this package to the jail when he was going up that afternoon. He said, "I am not going up this afternoon, Mrs. Nelson." She said, "Why you said you were going to see Roy this afternoon." And he said, "I have no intention of seeing Roy this afternoon." She said, "I have a package for you and I have some stuff in it and I want him to have it." He said, "I cannot take it up. I would not if I could." She said that if he would not take it up she would, and then she left. I think the package was partly unwrapped or torn. There was no one in the office while she was there except Mrs. Knight and Tom. There was no Japanese or Chinamen there. There was no iron or ironing-board there. I have been in the office several times and never saw such a thing.

Cross-examination. [59—36]

When Mrs. Nelson wanted Mr. Casey to take some stuff up to the jail and told about Roy Nelson being very sick Mr. Casey said, "You better get a doctor."

TESTIMONY OF A. A. KAMP, FOR DEFENDANT.

A. A. KAMP, being duly sworn, testified:

I am a builder and live at 2933 Franklin North. I have lived here 19 years. I had an engagement to go to Lake City on the Bothell highway to see some land with the Caseys. Tom Casey and his

(Testimony of A. A. Kamp.)

2 brothers went. It was about 11 o'clock. We returned about 1 or 2 o'clock. I read the morning's paper that Mr. Casey was arrested. I went down to his brother's office and he told me that Tom was arrested.

TESTIMONY OF P. H. CASEY, FOR DEFENDANT.

P. H. CASEY, being duly sworn, testified:

I am in the timber business. It was between Christmas and New Year's when Tom, Leo, and myself and Mr. Kamp went out to see some property that Mr. Lee had for sale. Tom was driving the car. We met Mr. Lee on the old Bothell highway. We reached Mr. Kamp's home between 11 or 11:30 A. M. We returned between 1 and 2 o'clock.

TESTIMONY OF THOMAS J. CASEY, IN HIS OWN BEHALF.

THOMAS J. CASEY, being duly sworn, testified:

I have lived in Seattle about 24 years and am 52 years old. I have a wife and little girl 8 years old. I am a lawyer and have practiced since January, 1903, general practice, no specialty. I have handled all kinds of criminal and civil cases.

Here defendant offered to mention several important cases in which he took part as attorney. An objection was sustained to this evidence. An exception allowed.

(Testimony of Thomas J. Casey.)

I had a case known as the Gleason case. W. J. Patterson arrested Lee Gleason and seized his automobile. I asked Patterson what disposition he was going to make of it and he would not give me any satisfaction. I asked him about the automobile once or twice and he said, "The automobile is not very valuable." I asked him if it was worth driving to Portland and he said, "I don't think so. I took the matter up with Mr. Williamson and said the [60—37] automobile ought to be returned to the wife. Later Patterson said he understood I was going to drop the matter and I told him I could not convey any title to the automobile. He said, "You put me in bad now. I have had a lot of trouble about this on your account. I understood you were not going to say any more about the automobile." I told Mr. Patterson that was not the position he should take, and he became incensed and angry with me and said I was a double-crosser. I resented the imputation and we said nothing more about it.

My office was in the New York Block about 17 years. When they dismantled the Building I moved to the Melhourn Building.

I have never bought, sold, gave away, or possessed a single grain of morphine or other opiate. I have never procured, or suggested to anyone else to procure morphine or narcotics of any kind.

I heard George Cicero's testimony about Wilson and never made any such a proposition at any time. I never sent or caused to be sent any narcotics to Wilson on the 18th or 19th of December,

(Testimony of Thomas J. Casey.)

1925, or at any other time. I had absolutely nothing to do with that the Trusty Hawkins testified about, and knew nothing about it. I never represented Wilson. Cicero gave me $25.00 as part of a fee. His mother first came to me in the City Building at 5th and Yesler. I was going to see another client. Cicero had been taking orders for Christmas trees and I helped the old lady, his mother, to get the orders at the City jail straightened out. She asked who I was, and I handed her my card. Later Cicero sent for me. I got a permit from the Marshal's office to see him. He was in jail for forging a doctor's certificate for morphine.

He said, "I haven't much money but I can get $100 for you. My mother has money and I have some money coming for Christmas trees." I said, "If you are short I can handle your matter, but lawyers have to live and money is always welcome." He sent for me later [61—38] and we had several conferences. He asked me at one time if I would get what he called "junk" or "dope." I put him off at the time but later he asked me again and I said, "Look here, you have been in trouble here. Do you expect me to do something that would make me change places with you? You know I cannot bring you any dope. I may have promised you but you know I never brought anything and never intend to. Why should you insist on my bringing you this stuff?"

On December 28 or 29th I received several calls to go to the jail. I did not go until the 31st.

(Testimony of Thomas J. Casey.)

Allen Stark then telephoned that Roy Nelson and George Cicero wanted me. I said I would be up after while. He said, "These fellows have been crying for you for two or three days." I went up about 10 o'clock. Cicero came out and sat behind the screen. I sat on the other side and conferred with him. He said he was awfully sick. I said, "I do not think you are as sick as you pretend to be." I noticed he walked spryly and was apparently feigning sickness. He asked if he could have some narcotics. I said, "You can have all you want, I guess, but I cannot bring you anything of that kind. Why do you insist on bringing this question up again?" He said he had $20.00. I said, "Have you really got $20.00?" He then spoke to me about Nelson and he came out to the office and and gave me an order for $20.00.

I asked to see Nelson. He said, "I am here," and his sister spoke up and said, "Who are you?" I said, "I am Attorney Casey." I then interviewed him in one of those places. His sister said that "Roy has an Attorney," and I asked if he wanted me to represent him. I could not see him inside the grating, but he said, "Yes," and went around to the jail office and we conferred at the attorney's stall. I said, "Your sister says you have an attorney; how are you going to employ two attorneys?" He made a disparaging remark about his sister and said he wanted me to represent him and asked me to see his sister. I then asked him for her address. [62—39] He said he had

(Testimony of Thomas J. Casey.)

a hundred or a hundred and fifty dollars. I told him the usual fee was $500.00. "You can give me a retainer of $75.00." He said, "All right, I will." I went into the jail office and wrote an order for $75.00. Stark said he was sick and did not have that much money and finally said he would pay an order for $50.00. Exhibit 2 is the order I wrote out. I handed Mrs. Nelson my card and said, "You can find me any time by appointment."

Roy begged of me to get him some morphine. I said, "You are pretty sick. You ought to have a doctor."

I went to my office and later went out of the city to look at some real estate with my brothers Leo and P. H. Casey. We met a Mr. Lee on the way out. I got back to my office about half-past one or two o'clock. Mrs. Traynor came first; later Mrs. Knight came. Later a lady came and announced herself as Mrs. Nelson. She said she wanted me to take a parcel to the County Jail. I told her I had not planned on going up that afternoon. She said, "You were going to see Roy, were you not?" and I said, "I cannot go this afternoon." She said, "You promised him you would go up and bring him some stuff." I said, "You know, Mrs. Nelson, if I made such a promise I had no means of fulfilling it. I would not think of doing that." She then tore the package open a little bit and said, "It is perfectly safe to take it up. You can take it up to him better than I could because you are an attorney." I said, "Don't talk that way to me. I will not have

(Testimony of Thomas J. Casey.)

anything to do with it. I do not know where I could get anything." I told her if Roy is sick like you say he is you should get a physician to look after him, but I cannot take any stuff to him. I never did and never would. I may sometimes make such promises in order to relieve the mental anguish or suffering of the patient. I do not handle any such stuff at all." She said, "I will take it to him myself."

I have seen Government's Exhibit 10 before. She tore the package. I did not write "Roy Nelson, King County Jail" or anything [63—40] else on the package with pencil or pen, in her presence or otherwise. It is not my handwriting. "F. B. Nelson 1:45 December 31, 1925," is not my handwriting.

There is not and never was an iron or ironing-board in my office.

I began to think that I should inquire further into her request for me to take the package to the County Jail. I went there and asked Cicero if a package was delivered to him or Nelson that afternoon. He said no. I also asked Hawkins and he said nothing had come up. No one told me there was any narcotics or morphine in the package except Mrs. Nelson, who told me there was a few grains in the package. She said it was not enough for him.

When I was home a Mr. Smith, Deputy Marshal, phoned and said a bootlegger from Black Diamond wanted to see me. I said if it is necessary for me to come down right away I will go. I was just

(Testimony of Thomas J. Casey.)

sitting down to dinner and said if he could wait until to-morrow I could see him. I live about seven miles out. About a half hour later Mr. Patterson came to my house. Smith said, "I have a warrant for you, Tom." I read it and saw it was based on Patterson's affidavit. I asked Patterson what this was all about. I told my wife I would be back in 2 or 3 hours. She did not know I was under arrest. On the way down I asked Patterson to bring me to Williamson's office. I said I was ready to tell everything and straighten the matter out. I have done nothing to go to jail for. Patterson would give me no information. He said, "You are going to the County Jail now. You are under $10,000 bond." I asked why such an enormous bond. Patterson told Jailer Barr not to let Casey talk to anybody. After he had gone I asked Barr to allow me to telephone my wife, but he refused. I gave bond about 3 o'clock next day.

I was never in any trouble and never accused of any crime prior to this. I never at any time sent any narcotics to the County jail and never was a party to sending any. I never purchased [64—41] in this district or elsewhere from any person, opium or 3.4 grains morphine or any other amount. I never manufactured or produced in this district or elsewhere and never dispensed, distributed, or administered any.

I never made any statement to Cicero that I would send him morphine in a towel or laundry. Cicero knows that I would not do that. There was

(Testimony of Thomas J. Casey.)

no such statement as my sending morphine to Cicero by laundry, by messenger or otherwise.

I had nothing to conceal. I talked in a normal tone of voice. The money that Nelson paid to me was absolutely a retainer fee and that was the only purpose I received it for.

Cross-examination.

If you want my movements in chronological order that day I will tell you. I first came from the jail to my office. Maybe it was 11 o'clock or after. I bought the handkerchiefs from Tvete at 3d and Marion. I went with my brother to Capitol Hill and out to see the property. I cannot fix the exact time but I know the "Times" whistle blew at 12 o'clock while we were on the property at Lake City. I think I returned about 1:30.

After I had been arrested, naturally I did not appear for Cicero.

I bought a half dozen of plain linen handkerchiefs from Mr. Tvete for $2.00.

There never was a Jap or Chinaman in my office.

Re*cross*-examination.

Cicero employed me as his attorney and he was paying me that money as a part of my fee that he agreed to pay me. Regarding Nelson he told me that he wanted me as his attorney at that time.

Regarding a change of collars and socks, I often went out in the timber with my brother P. H. and often came back soaked with my feet wet

(Testimony of Hans Jacob Hoff.)

and would change my socks there. The handkerchiefs which were found in my office were probably mine. [65—42]

TESTIMONY OF HANS JACOB HOFF, FOR DEFENDANT (RECALLED).

HANS JACOB HOFF was recalled and testified:

That the person who wrote "1:45 o'clock December 31, 1925," in green ink on Exhibit 10, was not the same person who wrote Exhibits 1 and 2.

TESTIMONY OF E. P. CHALCROFT, FOR DEFENDANT.

E. P. CHALCROFT, being duly sworn, testified:

That he was a Reporter on the "P–I." That he went with Patterson and Smith to Casey's home on December 31, 1925. That on the return trip Casey asked Patterson very earnestly to take him to the U. S. Commissioner so that he might give bond. He also asked to be taken to Mr. Williamson's office, and when he asked if he was being taken there Patterson said, "You are going to the County Jail." Casey said the next day was a holiday and he could not post bonds. He then asked to let him talk to Williamson or see the U. S. Commissioner, or Judge or anyone so that he could post bonds that evening.

(Testimony of E. P. Chalcroft.)

Cross-examination.

He first told me he knew nothing of why he was arrested. When I told him that the officers informed me that he had arranged to supply narcotics to Cicero and Nelson in the County jail, as I remember he then said, "Perhaps I did kid them along to let them down easy." That was about all that was said. He did say that it was usual for addicts to ask him for narcotics, but he denied that he had ever furnished any.

TESTIMONY OF D. C. BOWLES, FOR DEFENDANT.

D. C. BOWLES, being duly sworn, testified:

I have had charge for fourteen years of the Department which sells towels in the Western Dry Goods Co. We sell to merchants throughout the city. We buy from a dozen different mills. We have not sold or handled towels like Government Exhibits 4 and 9 for the last six years. We had no towels of that pattern in November and December, 1925. That being a fancy towel of a peculiar pattern, I know we do not handle it. [66—43]

TESTIMONY OF DR. A. P. CALHOUN, FOR DEFENDANT.

DR. A. P. CALHOUN, being duly sworn, testified:

I was born at 3rd and Jefferson in Seattle. I was superintendent of the Insane Hospital at Steil-

(Testimony of Dr. A. P. Calhoun.)

acoom for 8 years and 3 months. I have had the opportunity to observe the effects of morphine and those who use it. I have seen a large number of addicts.

At first it had an exhilarating effect. A pleasurable feeling. But when that wears off it is one of depression. When they get another dose they go up and then down again. This goes on until they become what we call chronic addicts. Their finer senses, the ethical senses, truth and veracity go first. They do not care what they do; they are careless about their appearance; they will lie to get the drug. They have a violent nerve reaction and even go to the point of collapse.

Promises of the drug is one of the methods of treating these cases. It is what we term as the withdrawal method. The promise tends to buoy them up, to hold over them the anticipation that they will get the drug.

Cross-examination.

Some addicts stand it very well and go all through life using morphine, and some will succumb in a few months or years. Some take 5 or 6 grains and some take 30 or 40 grains.

INSTRUCTIONS.

Defendant challenged the sufficiency of the evidence and requested the court to instruct the jury to return a verdict of Not Guilty on Count I of the Indictment.

Also requested the Court to instruct the jury to return a verdict of Not Guilty on Count II of the Indictment. [67—44]

After the jury returned its verdict and before judgment, defendant filed a written motion in arrest of judgment, and also motion for a new trial.

The motion in arrest of judgment was overruled July 3, 1926, and an exception allowed. Defendant also excepted to the judgment and sentence on July 3, 1926, which exception was allowed.

The defendant, in support of his motion for a new trial, served and filed the following affidavits:

AFFIDAVIT OF E. L. TVETE.

"E. L. TVETE, being first duly sworn, deposes and says: That he is the owner of a Men's Furnishing Store at 3rd and Marion, Seattle; that on December 31, 1925, the defendant Casey purchased six plain handkerchiefs from affiant; that the initial 'N' was not on any of said handkerchiefs as shown on Government exhibits 5, 6 and 7 herein; that affiant was subpoenaed as a Government witness but was not called upon when it was learned what affiant's testimony would be."

AFFIDAVIT OF C. L. STEVENS.

"C. L. Stevens, being duly sworn, deposes and says: That for several years he has been engaged in the grocery business at 5703 Rainier Avenue, Seattle, that he has known Mrs. Frances Nelson for two or three years, who now resides at 4534 Orcas St.; that he knew her when she lived in Ballard where she lived for nearly a year to affant's

knowledge; that she often visited affiant's store and affiant knows her well and knows her general reputation for truth and veracity and the same is utterly bad. [68—45]

That affiant heard Mrs. Nelson say that she would kill Casey."

AFFIDAVIT OF E. G. KOCH.

"E. G. Koch, being first duly sworn, says: That he is the owner of a market near Rainier Avenue and Orcas Street, in Seattle, near where one Mrs. Frances Nelson resides. That affiant has often seen said person and has sold meat and other things to her and has often talked to her that affiant knows her general reputation for truth, honesty, and integrity in the community where she resides that her said reputation is bad and affiant would not believe her under oath."

AFFIDAVIT OF E. L. DILLERY.

"E. L. Dillery, being first duly sworn, says: That he resides with his family at 1726 West 63rd Street, in Ballard. That he is well acquainted with the woman who goes by the name of Mrs. Frances V. Nelson and who lived with Fred Nelson as his wife. That affiant is engaged in the transfer business and in 1924 moved the goods and effects of said Frances Nelson from 1507 West 57th Street in Ballard, to rooms at No. 6029–14th Avenue N. W., Ballard, and she then moved to 908 West 51st Street, Ballard. That the picture of said person was in the P. I. on June 25, 1926, and mentioned as a witness against defendant herein."

AFFIDAVIT OF EDWARD LENHEART.

"Edward Lenheart, being first duly sworn, says: That he resides at 1126 West 63rd Street, Ballard, and drives a market delivery truck. That affiant met a person known as Mrs. Fred Nelson and knows she resided at 908 West 51st Street, Ballard, in 1924. That her picture appeared in the Seattle P. I. on June 25, 1926, in a news article as a Government witness against defendant herein. That said Mrs. Nelson told affiant she was a bootlegger and it was necessary to live at various places but that she was too smart for the police to catch her."

AFFIDAVIT OF AUGUST PELASKEY.

"August Pelaskey, being first duly sworn, deposes and says: That he owns a meat market at 6017–14th Avenue N. W., Ballard. That he knows Frances V. Nelson, who was also known as Mrs. Fred Nelson, that affiant often sold meat to her while she resided at 908 51st Street in Ballard, in 1924. That she makes false statements and is a persistent falsifier, that her general reputation in the community where she has lived for truth, veracity, and integrity is very bad."

AFFIDAVIT OF JOHN DOLAN, W. B. WHITE, C. A. SHUART, AND S. B. OVERTON.

John Dolan, W. B. White, C. A. Shuart, and S. B. Overton, each being first duly sworn, deposes and says: That he was one of the jurors who sat and

tried the above-named defendant: That on the first ballot eight of the jurors voted to acquit defendant, Thomas J. Casey; that affiants' attention has been called to the affidavits of Harry Short, Edward Lenheart, John P. Whalen, C. L. Stevens, August Pelaskey, and others regarding the character and reputation of Mrs. Frances Nelson for truth and veracity that if such matter as therein set forth had been presented to the jury that a speedy acquittal of defendant would have resulted."

AFFIDAVIT OF JOHN P. WHALEN.

"John P. Whalen, being first duly sworn, deposes and says: That he is engaged in the bakery business near Rainier Avenue and Orcas Street, in Seattle; that he has often met Mrs. Frances Nelson, that after the arrest of defendant, Thomas J. Casey, affiant said as [69—46] follows: 'I see they got Casey the Lawyer. Gee, they sure are getting the doctors and lawyers.' To which Mrs. Nelson said, 'Oh, that's a frame-up.' Affiant then said, 'How do you know it's a frame-up?' She said, 'I know.' Affiant repeated, 'How do you know?' She answered, 'I know they framed my brother-in-law.' Affiant again asked, 'Yes, but how do you know this is a frame-up?' She answered, 'I know for I just came from the Federal's office.' Affiant then asked, 'What were you doing there?' She answered, 'I work there.'"

Affiant further states that he met said Mrs. Nelson a day or two before the trial and said to her, 'I heard you are going to be the star witness.' She

answered, 'No, I'm not a witness.' That affiant never met defendant, Casey, until after the trial and has no interest in the case except to see that injustice is not done."

AFFIDAVIT OF MRS. JAMES LIVINGSTON.

"Mrs. James Livingston, being first duly sworn, deposes and says: That she resides with her family, husband and three boys, in Seattle, for ten years. That she knows a person who in 1922 was introduced to her as Mrs. Kelley, who was formerly married to Roy W. Murray; that such person now goes by the name of Mrs. Frances Nelson. That affiant has personally examined the marriage records in the clerk's office of King County, that it appears said Frances Nelson was originally Frances V. Love and came from Cle Elum, Kittitas County, Washington, and was married to Roy W. Murray on June 14, 1915. See book A 5 P. 85 of Marriage Certificates. That on June 14, 1919, said person, known as Mrs. Nelson, was married to Arthur J. Kelley. That on April 3, 1922, she brought an action against said Kelly for divorce, in King County cause No. 158151 in said Superior Court. That cause has never been tried."

AFFIDAVIT OF A. P. CASEY.

"A. P. Casey, being duly sworn, deposes and says: That he has taught chemistry for several years in the High and Normal schools of Wisconsin and Washington. That affiant knows and states from his knowledge of chemical reaction that the transfer of morphine solution cannot be pressed into a towel by an electric flat-iron so as to be used

by the addicts in jail, that such transfer would be an impossibility. That morphine loses all water at 120 degrees of heat and 150 degrees begins to supline or vaporize that above 230 degrees it chars and then becomes practically insoluble in water, except by skilled treatment. That Albert Jacobson informed affiant that he could not discover morphine in Exhibit 11, if he *if he* had not been told where to find it by Agent Patterson; that he dissolved the 3.4 grains of morphine by a process totally beyond the addict's in jail."

AFFIDAVIT OF JOHN DOLAN, S. B. OVERTON, W. B. WHITE AND RICHARD ZORNS.

"John Dolan, S. B. Overton, W. B. White and Richard Zorns, each being duly sworn deposes and says: That he was a juror who tried the defendant, Thomas J. Casey; that after the first ballot, which was eight for acquittal, a question arose as to the handwriting on Exhibit 10, most of the jurors believing defendant did not write the words 'Roy Nelson King County Jail,' on said exhibit; one of the jurors then said that he had attended a class of private schools which had also been attended by defendant; that the system of handwriting taught in such private schools was the same system as that used by the person writing the words 'Roy Nelson King County Jail' on Exhibit 10; that he was fully convinced from such fact that defendant wrote the disputed words and that the other jurors could take his word for it. That such statement

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of [70—47] the juror was thereafter considered by the jury in arriving at their verdict."

No counter-affidavits were served or filed.

Upon consideration of said motion for a new trial and said affidavits the motion was denied September 20, 1926, and defendant allowed an exception.

The plaintiff in error prays that his amended bill of exceptions may be allowed, settled and signed.

J. C. ALLEN,
JOHN T. CASEY,
JOHN T. CASEY,
Attorneys for Plaintiff in Error. [71—48]

[Title of Court and Cause.]

ORDER SETTLING BILL OF EXCEPTIONS.

The preceding forty-eight pages are settled as a bill of exceptions in the above-entitled case, being agreed upon by the attorneys for the plaintiff and defendant, except as settled upon a hearing at which both were present.

Done in open court this 24th day of Feb., 1927.

EDWARD E. CUSHMAN,
Judge.

Copy received of the foregoing amended bill of exceptions admitted this 11 day of January, A. D. 1927.

THOS. P. REVELLEE,
U. S. Attorney.
PAUL D. COLES,
Asst. U. S. Atty.

[Endorsed]: Original Bill of Exceptions. Lodged in the United States District Court, Western District of Washington, Northern Division, Sep. 29, 1926.

[Endorsed]: Filed Feb. 24, 1927. [72]

[Title of Court and Cause.]

ORDER EXTENDING TIME TO AND INCLUDING JANUARY 10, 1927, TO PREPARE AND TRANSMIT RECORD.

It appearing to the Court that the bill of exceptions has not yet been settled, and that further time is necessary for the Clerk to prepare, certify and file, and transmit the transcript of the record to the Circuit Court of Appeals, now on motion of defendant herein, plaintiff in error, it is now and hereby:

ORDERED, that the time for filing the record in the Circuit Court of Appeals be extended, and that plaintiff in error is hereby allowed until January 10th, 1927, in which to have the record prepared and transmitted to said Circuit Court of Appeals, and filed therein in support of his writ of error.

Dated December 6th, 1926.

EDWARD E. CUSHMAN,
Judge.

[Endorsed]: Filed Dec. 6, 1926. [73]

[Title of Court and Cause.]

ORDER EXTENDING TIME TO AND INCLUDING FEBRUARY 7, 1927, TO FILE RECORD.

IT IS HEREBY ORDERED, that the time for filing the record in the Circuit Court of Appeals for the Ninth Circuit be, and the same hereby is, extended up to and including the 7th day of February, 1927.

Dated and done in open court this 3 day of January, 1927.

EDWARD E. CUSHMAN.

[Endorsed]: Filed Jan. 3, 1927. [74]

[Title of Court and Cause.]

ORDER EXTENDING TIME TO AND INCLUDING MARCH 7, 1927, TO FILE RECORD.

IT IS HEREBY ORDERED, that the time for filing the record in the above-entitled cause in the United States Circuit Court of Appeals for the Ninth Circuit be, and the same is hereby, extended up to and including the 7th day of March, 1927.

Dated and done in open court February 7th, 1927.

EDWARD E. CUSHMAN,
Judge.

[Endorsed]: Filed Feb. 7, 1927. [75]

[Title of Court and Cause.]

ORDER TO TRANSMIT ORIGINAL EXHIBIT.

The Exhibit No. 10 in the above-entitled cause being material to the determination of the issues raised by the assignments of error herein, now, therefore,

IT IS ORDERED that the original Exhibit Ten (10) admitted in evidence at the trial of the above-entitled cause be forwarded by the Clerk of this court to the Clerk of the Circuit Court of Appeals for the Ninth Circuit at San Francisco, California.

Dated at Seattle, this 1st day of March, 1927.

EDWARD E. CUSHMAN,
District Judge.

[Endorsed]: Filed Mar. 1, 1927. [76]

[Title of Court and Cause.]

STATEMENT OF THOMAS J. CASEY.

State of Washington,
County of King,—ss.

Thomas J. Casey, being first *duly deposes* and says:

That he is the defendant, and plaintiff *is* error in the above-entitled action; that he is a citizen of the United States; that because of his poverty affiant is unable to pay or prepay the fees and costs for certifying and printing the record herein on the

writ of error which affiant has sued out for the review of his case in the Ninth Circuit Court of Appeals, or to give security for the same; that affiant believes he is entitled to the redress he seeks by such writ of error.

That said writ of error is sued out from a judgment wherein affiant is found guilty of having the unlawful possession of 3.4 grains of morphine, and of selling the same.

That the whole case against affiant was based essentially on the evidence of one witness, whom affiant believes was impeached by physical facts and the testimony of several witnesses of undisputed integrity.

That eight of the jurors voted for affiant's acquittal on the first ballot and made affidavits that if the impeaching evidence against said witness had been produced at the trial a speedy acquittal would have resulted.

That several jurors made a further affidavit that one of the jurors gave testimony against affiant in the jury-room which was considered by the jury in arriving at their verdict.

That affiant asks that the record be certified and filed by the Clerk, and sent to the said Ninth Circuit Court of Appeals, so that said writ of error may be heard without printing the record, and without affiant prepaying the fees and costs therefor.

THOMAS J. CASEY.

Subscribed and sworn to before me this 7th day of February, A. D. 1927.

[Seal] LIONEL A. MICHELSON,
Notary Public for the State of Washington, Residing at Seattle.

[Endorsed]: Filed Feb. 26, 1927. [77]

[Title of Court and Cause.]

ORDER TO TRANSMIT RECORD IN FORMA PAUPERIS.

On consideration of defendant's application for an order allowing him to prosecute his writ of error herein *in forma pauperis* and without the prepayment of costs and fees,—

IT IS HEREBY ORDERED, that said application is granted in so far as work and services by the Clerk of this court is necessary to the prosecution of such writ of error.

Done in open court this 25 day of February, A. D. 1927.

EDWARD E. CUSHMAN,
Judge.

[Endorsed]: Filed Feb. 25, 1927. [78]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To Ed. M. Lakin, Clerk:

You will please prepare a typewritten transcript of the record in the above-entitled cause on writ of error and file the same, and transmit the same certified, to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, such record to comprise the following papers and documents:

1. Indictment.
2. Verdict.
3. Judgment.
4. Petition for writ of error.
5. Order allowing writ of error.
6. Citation on writ of error.
7. Writ of error.
8. Motion in arrest of judgment.
9. Motion for new trial, with supplemental motion.
10. Assignment of errors.
11. Bill of exceptions, with exhibits.
12. Bond on appeal.
13. Order to file record, with affidavit therefor.
14. This praecipe for record.

JOHN T. CASEY,
JAY C. ALLEN,
JOHN T. CASEY,
Defendant's Attorneys.

Due service of the foregoing praecipe admitted and copy received February 26, 1927.

ANTHONY SAVAGE,
Asst. United States Attorney.

[Endorsed]: Filed Feb. 26, 1927. [79]

[Title of Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO TRANSCRIPT OF RECORD.

United States of America,
Western District of Washington,—ss.

I, Ed. M. Lakin, Clerk of the United States District Court for the Western District of Washington, do hereby certify this typewritten transcript of record, consisting of pages numbered from 1 to 84, inclusive, to be a full, true, correct, and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause, as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court and that the same constitute the record on return to writ of error herein, from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the costs, fees and charges incurred in my office by or on behalf of the plaintiff in error for making record, certificate or return

to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, amount to $33.40. [80]

I further certify that by order of Court, filed and shown herein, the plaintiff in error has been allowed to prosecute his writ of error *in forma pauperis* in so far as work and services by the Clerk of this court is necessary to the prosecution of said writ of error.

I further certify that I hereto attach and herewith transmit the original writ of error and citation on writ of error issued in this cause.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said District Court at Seattle, in said District, this 3d day of March, 1927.

[Seal] ED. M. LAKIN,
Clerk U. S. District Court, Western District of Wash.

By S. E. Leitch,
Deputy. [81]

[Title of Court and Cause.]

WRIT OF ERROR.

The United States of America,—ss.

The President of the United States of America, to the Hon. E. E. CUSHMAN, Judge of the District Court of the Western District of Washington, Northern Division, and to said Court, GREETING:

Because in the record and proceedings as also in the rendition of the judgment and sentence in

the District Court of the United States for the Western District of Washington, Northern Division, in a cause pending therein, wherein the United States of America was plaintiff and Thomas J. Casey, defendant, it is charged a manifest error happened and occurred to the damage of the said Thomas J. Casey, the above-named plaintiff in error as by his petition and complaint doth appear, and we being willing that error, if any there has been, should be corrected, and full and speedy justice be done to the parties aforesaid in this behalf, do command you that under your seal you send the record and proceedings aforesaid with all things concerning the same and pertaining thereto to the U. S. Circuit Court of Appeals for the Ninth Circuit, together with this writ so that you may have the same at San Francisco where said court is sitting within thirty days from the date hereof in the said Circuit Court of Appeals to be then and there held and the records and proceedings aforesaid being inspected the said United States Court of Appeals may cause further to be done therein to correct the error what of right and according to the law and the custom of the United States should be done.

WITNESS, the Hon. WILLIAM HOWARD TAFT, Chief Justice of the [82] United States, this 29th day of September, 1926.

[Seal] ED. M. LAKIN,

Clerk of the United States District Court, for the Western District of Washington.

By S. E. Leitch,

Deputy.

Allowed this 29th day of September, 1926.

EDWARD E. CUSHMAN,
District Judge.

Received a copy of the foregoing writ of error this 29 day of September, 1926.

THOS. P. REVELLE,
PAUL D. COLES,
U. S. Attorney.

[Endorsed]: Filed Sep. 29, 1926. [83]

[Title of Court and Cause.]

CITATION ON WRIT OF ERROR.

To the United States of America, GREETING:

You are hereby cited and admonished to be and appear in a session of the U. S. Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, State of California, within thirty (30) days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the Western District of Washington, Northern Division, wherein Thomas J. Casey is plaintiff in error and the United States of America is defendant in error, to show cause, if any there be, why the judgment rendered against Thomas J. Casey, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

WITNESS the Honorable E. E. CUSHMAN, Judge of the District Court of the United States,

for the Western District of Washington, this 29th day of September, 1926.

[Seal] EDWARD E. CUSHMAN,
District Judge.

Due service of a copy of the foregoing citation admitted this 29 day of September, 1926.

THOS. P. REVELLE,
PAUL D. COLES,
District Attorneys.

[Endorsed]: Filed Sep. 29, 1926. [84]

[Endorsed]: No. 5104. United States Circuit Court of Appeals for the Ninth Circuit. Thomas J. Casey, Plaintiff in Error, vs. United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Western District of Washington, Northern Division.

Filed March 18, 1927.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

No. 5104

United States

Circuit Court of Appeals

For the Ninth Circuit.

THOMAS J. CASEY,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Upon Writ of Error to the United States District Court of the Western District of Washington, Northern Division.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

At a stated term, to wit, the October Term, A. D. 1926, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Thursday, the nineteenth day of May, in the year of our Lord one thousand nine hundred and twenty-seven. Present: Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; Honorable FRANK H. RUDKIN, Circuit Judge; Honorable FRANK S. DIETRICH, Circuit Judge.

No. 5104.

THOMAS J. CASEY,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

ORDER OF SUBMISSION.

ORDERED above cause argued by Messrs. William F. Herron and John T. Casey, counsel for the plaintiff in error, and by Mr. Paul D. Coles, Assistant United States Attorney, counsel for the defendant in error, and submitted to the Court for consideration and decision, with leave to counsel for the plaintiff in error to file a reply brief within fifteen (15) days.

At a stated term, to wit, the October Term, A. D. 1926, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the twenty-seventh day of June, in the year of our Lord one thousand nine hundred and twenty-seven. Present: Honorable WILLIAM H. HUNT, Circuit Judge, Presiding; Honorable FRANK H. RUDKIN, Circuit Judge.

No. 5104.

THOMAS J. CASEY,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

ORDER DIRECTING FILING OF OPINION AND CONCURRING OPINION AND FILING AND RECORDING OF JUDGMENT.

By direction of the Honorable William B. Gilbert, Frank H. Rudkin and Frank S. Dietrich, Circuit Judges, before whom the cause was heard, ORDERED that the typewritten opinion this day rendered by this Court be forthwith filed by the Clerk and that a judgment be filed and recorded in the minutes of this court in accordance with the opinion filed.

By direction of the Honorable Frank H. Rudkin, Circuit Judge, ORDERED that the concurring opinion this day rendered by him be forthwith filed by the Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 5104.

THOMAS J. CASEY,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

OPINION U. S. CIRCUIT COURT OF APPEALS.

Upon Appeal from the United States District Court, Western District of Washington, Northern Division.

Before GILBERT, RUDKIN, and DIETRICH, Circuit Judges.

DIETRICH, Circuit Judge.—Defendant (plaintiff in error) was adjudged guilty upon both counts of an indictment charging him, (1) with the purchase of 3.4 grains morphine not in the original stamped package, and (2) with having dispensed morphine without having registered or paid the special tax as required by law, venue of both charges, Seattle, Washington, and time of both, December 31, 1925. The sentences were the same

on both counts, the terms of imprisonment to run concurrently.

The sufficiency of the first count is not seriously challenged. One of the clauses is grammatically misplaced, but the meaning is so obvious that to quash upon that ground would be a pure legalism. The question of the constitutionality of the Harrison Narcotic Act is raised only for procedural purposes, and properly counsel refrain from urging reconsideration of it here.

Count II is assailed as "purely a blanket charge." It sets forth that on December 31, 1925, at the city of Seattle, defendant without having registered or paid the special tax as required and imposed by law, did knowingly and feloniously "manufacture, produce, compound, sell, deal in, dispense, distribute, administer, and give away morphine." There is no averment of the amount of the drug or of the persons to whom it was dispensed. While we are unable to approve the practice of including in a charge all the acts denounced by the statute, where it is known the evidence will have no tendency to support some of them, it is well settled that such a form of pleading is not fatally defective. Here there probably never was any thought of attempting to prove that defendant manufactured or produced or compounded, but we are are unable to see how the inclusion of these terms was prejudicial. In one aspect the failure to allege the amount of the drug or the identity of the persons to whom dispensed, would seem to be more serious. But as bearing upon both the charge and

certain evidence to which defendant objected, adduced in support thereof, it is to be borne in mind that the offense denounced by the statute may be and often is evidenced not by a single act but by a series of acts of the same character. To prove that a defendant is dealing in, dispensing, or distributing morphine, the Government may show few or many transactions in which he has sold or furnished the drug. In such a case it might be impracticable and certainly not necessary to plead the details of such transactions, for after all they are but evidence of the ultimate fact to be found. In no way did the defendant here challenge the indictment until after a verdict, and as against a motion in arrest of judgment it is plainly invulnerable. Had he complained before trial that in view of the generality of the charge he could not intelligently or safely prepare his defense, it is to be presumed that upon seasonable application the Court would have ordered a reasonably certain bill of particulars. See Stubbs vs. United States, 1 Fed. (2d) 837, where we affirmed a judgment upon a similar charge, a bill of particulars having been sought and secured.

Defendant relies mainly upon Miller vs. United States, 288 Fed. 816, and Johnson vs. United States, 294 Fed. 753, the latter decided by this Court. In both cases the indictment was assailed by demurrer, for uncertainty as well as insufficiency. In the former the first ground was sustained but the second apparently overruled. In the Johnson case the

charge was not the same as here and presented somewhat different considerations.

As to the point that there is no express averment that defendant was a person of whom registration and payment of tax is required, the necessary implication of the allegation is that he was within such class. We so held in Bacigalupi vs. United States, 274 Fed. 367.

Upon the second count the evidence, though conflicting, is ample to support the verdict. As to the first count, to establish the charge of purchase the Government relied upon evidence of possession by the defendant of the drug not in the original stamped package, together with the declaration of the statute that "The absence of appropriate tax paid stamps * * * shall be *prima facie* evidence of the violation of this section by the person in whose possession the same may be found." There was no other evidence of the place of purchase, and arguing that the statutory presumption does not extend to venue, defendant contends the proof was vitally defective. Considering a similar charge in the case of Ny Sing et al. vs. United States, 8 Fed. (2d) 919, we said: "The plaintiffs in error are therefore subject to the presumption arising from possession under the Amendment of 1919, and the presumption alone would carry the case to the jury." But possibly the precise point was not there raised. While defendant's contention is not without support in the decided cases (see Brightman vs. United States, 7 Fed. (2d) 532; Cain vs. United States, 12 Fed. (2d) 580; and Moss

vs. United States, 14 Fed. (2d) 1021), to grant it would seem to rob the statute of all efficacy. If independently of the statutory presumption, the Government must affirmatively prove the place of purchase, it must also by like evidence prove the substantative fact of purchase, for how the place of purchase can be established without at the same time proving the purchase, is not apparent. Fairly construed, the statute in our opinion extends the presumption to the incidental matter of place as well as the substantative matter of purchase. But aside from that consideration, the record fails to show that the question was raised in the lower court. True, the bill of exceptions recites that defendant "challenged the sufficiency of the evidence and requested the Court to instruct the jury" to acquit; but on what grounds is not disclosed. Proof of venue is often easily supplied, and both upon reason and authority it is thought that to make such an assignment available the attention of the trial court must be specifically directed to the defect. Ryan vs. United States, 285 Fed. 734; Jianole vs. United States, 299 Fed. 496.

The several assignments involving the reception of evidence, may be summarily disposed of. Some of them are trivial and so clearly devoid of merit that comment is unnecessary. The only ones seriously argued cover testimony relating to acts and circumstances which it is contended are unconnected with the alleged sale on December 31st, and relate to offenses not charged; but all of it directly or indirectly tended to show that on Decem-

ber 31st defendant was dealing in and dispensing narcotics, and also that defendant was a person required to register; hence, it was relevant (Stubbs vs. United States, 1 Fed. (2d) 837; Braden vs. United States, 270 Fed. 441).

One of the grounds upon which defendant moved for a new trial was newly discovered evidence, supported by numerous affidavits which in the main assail the character and credibility of one of the Government witnesses and tend to show that she was untruthful in some of the testimony she gave. Generally the granting or refusing of a new trial is within the discretion of the Court; and new trials upon this ground are not favored. Under the circumstances, defendant must have known or had good reason to anticipate that this witness would testify for the Government, but there is no showing at all of diligence. The alleged false testimony was brought out on cross-examination as to matters purely incidental and collateral. Upon the whole, while the showing against the credibility of the witness is persuasive, we cannot say that there was an abuse of discretion in denying the motion upon this ground.

Another ground relied upon for a new trial was alleged misconduct of the jury. Specifically, as shown by the affidavits of some of the jurors, the question having arisen in the jury-room whether or not defendant wrote certain words upon the wrapper of a laundry package in which the Government contended defendant smuggled narcotics to prisoners in the county jail, one of the jurors stated that both

he and defendant had attended a private school where the system of penmanship taught was the same as that exemplified in the disputed words, and that he was convinced defendant wrote them. That a writing is in the hand of a defendant because it conforms to a system of penmanship he and many other persons have been taught is such an irrational conclusion that it is beyond belief intelligent men would be greatly influenced thereby. It must be, too, that in their deliberations jurors more or less generally recall experiences in their own lives, and if new trials were commonly granted for such a reason there would be no end to litigation.

The judgment is affirmed.

CONCURRING OPINION OF RUDKIN, C. J.

RUDKIN, C. J., Concurring.—The concurrent judgment is supported by the second count alone, and for that reason I express no opinion as to the sufficiency of the evidence to support the verdict on the first count. I agree with Judge Dietrich that the cases holding that the presumption arising from possession does not extend to the venue would seem to rob the statute of its efficacy, but inasmuch as the Courts of two circuits have so ruled, I think the question should be reserved until it becomes necessary to a decision of some case properly before us.

[Endorsed]: Opinion and Concurring Opinion of Rudkin, C. J. Filed Jun. 27, 1927. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 5104.

THOMAS J. CASEY,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

JUDGMENT U. S. CIRCUIT COURT OF APPEALS.

In Error to the District Court of the United States for the Western District of Washington, Northern Division.

This cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Western District of Washington, Northern Division, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is, affirmed.

[Endorsed]: Judgment. Filed and Entered Jun. 27, 1927. Frank D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

At a stated term, to wit, the October Term, A. D. 1926, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the first day of August, in the year of our Lord one thousand nine hundred and twenty-seven. Present: Honorable WILLIAM H. HUNT, Circuit Judge, Presiding; Honorable FRANK H. KERRIGAN, District Judge.

No. 5104.

THOMAS J. CASEY,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

ORDER DENYING PETITIONS FOR A REHEARING.

Upon consideration thereof, and by direction of the Honorable William B. Gilbert, Frank H. Rudkin and Frank S. Dietrich, Circuit Judges, before whom the cause was heard, IT IS ORDERED that the petitions, filed July 26, 1927, on behalf of the plaintiff in error for a rehearing of the above cause be and hereby is denied.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 5104.

THOMAS J. CASEY,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

ORDER STAYING ISSUANCE OF MANDATE, ETC.

Upon consideration of the application of Mr. Wm. F. Herron, counsel for the plaintiff in error, and good cause therefor appearing, IT IS ORDERED that the issuance, under Rule 32, of the mandate of this Court in the above cause be, and hereby is stayed until after the Supreme Court of the United States passes upon the petition for a writ of certiorari to be hereafter made by the plaintiff in error herein, on condition that the said petition be docketed in the Clerk's office of the said Supreme Court on or before Sept. 1, 1927.

W. H. HUNT,

United States Circuit Judge.

Dated: San Francisco, California, August 2, 1927.

[Endorsed]: Filed Aug. 1, 1927. F. D. Monckton, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 5104.

THOMAS J. CASEY,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

CERTIFICATE OF CLERK U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT TO RECORD CERTIFIED UNDER RULE 35 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, F. D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing one hundred and sixteen (116) pages, numbered from and including 1 to and including 116, to be a full, true and correct copy of the entire record, excluding original exhibits, of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the plaintiff in error, and certified under Rule 35 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

ATTEST my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 20th day of August, A. D. 1927.

[Seal]

F. D. MONCKTON,
Clerk.
By Paul P. O'Brien,
Deputy Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 21, 1927

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.